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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 378/2015

COMMISSIONER OF INCOME TAX- 8

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior standing
counsel with Ms. Lakshmi Gurung and Mr.
Abhishek Sharma, Advocates.

versus

SARDAR EXHIBITORS PVT. LTD

..... Respondent

AND

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ITA 379/2015

COMMISSIONER OF INCOME TAX- 8

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior standing
counsel with Ms. Lakshmi Gurung and Mr.
Abhishek Sharma, Advocates.

versus

SARDAR EXHIBITORS PVT. LTD

..... Respondent

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.07.2015

CM Nos. 11466/2015 & 11467/2015 (for exemption)

1. Exemptions allowed subject to all just exceptions.

ITA Nos. 378 & 379 of 2015

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2. The applications are disposed of.

ITA Nos. 378/2015 & 379/2015

3. These appeals by the Revenue are directed against the common order dated 10th November 2014 passed by the Income Tax Appellate Tribunal ('ITAT') dismissing the Revenue's appeals ITA Nos. 5432, 5433, 5434, 5435, 5436, 5437, 5438 and 5485/DEL/2010 for assessment years (AYs) 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1995-96, 1996-7 and 1994-95.

4. The brief facts relevant for the purposes of these appeals are that the premises No. A-33, Kailash Colony, New Delhi had been let out by the Respondent Assessee to the Ministry of Defence ('MoD') by a lease deed dated 16th September 1985 for a period of three years. The agreed 'compensation' was Rs.1,75,192 per month. With the MoD not vacating the premises upon expiry of the lease period, the dispute was referred to arbitration. An Award was passed by the sole Arbitrator on 30th April 1992 in favour of the Assessee. With the challenge to the Award by the MoD failing up to Supreme Court, in terms of the said Award, the Assessee received a payment of Rs.4,91,98,124 for rent and interest on arrears of rent

minus the tax deducted at source ('TDS') which worked out to Rs.10,04,043.

5. In the assessment proceedings for the aforementioned AYs, one of the questions that arose was whether the arrears of rent and interest thereon was a capital receipt or a revenue receipt. The ITAT by its order dated 6th October 2006 held that the amount received by the Assessee in terms of the arbitration Award was a revenue receipt and had to be assessed on accrual basis on year to year and not in any particular year or years.

6. The order of the ITAT impugned in the present appeals arose from the consequential penalty proceedings. The question that arose in the said penalty proceedings was whether the Assessee had deliberately failed to furnish accurate particulars of income by claiming the arrears of rent as capital receipt. The Assessing Officer ('AO') decided against the Assessee and upheld the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 ('Act').

7. The Assessee filed appeals before the Commissioner of Income Tax (Appeals) [CIT (A)]. In the separate orders allowing each of the Assessee's appeals, the CIT (A) noted that all the facts were disclosed to the authorities

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by the Assessee. It was held that the additions were made only on account of the difference of interpretation between the Department and the Assessee. Accordingly, it was held that the case did not fall within the purview of Section 271 (1) (c) of the Act.

8. The appeals filed by the Revenue against the aforementioned orders of the CIT (A) were dismissed by the impugned common order of the ITAT wherein the ITAT concurred with the CIT (A) and held that the Assessee's conduct cannot be said to warrant any levy of penalty.

9. The only ground urged before this Court by Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Revenue is that the Assessee had deliberately claimed revenue receipt as capital receipt. Since that question was itself in dispute and put in issue in the assessment proceedings involving the Assessee, the Court finds no error whatsoever in the CIT (A) holding that there was no deliberate concealment of income or misrepresentation of the income as a capital receipt by the Assessee.

10. The Court does not find any substantial question of law arising from the impugned common order of the ITAT which requires to be examined in these appeals.

11. The appeals are accordingly dismissed.



S. MURALIDHAR, J



VIBHU BAKHRU, J

JULY 06, 2015/dn