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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
16.
\+ **ITA 287/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX-07 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing counsel with Mr. Sanjay Kumar, Junior Standing counsel.

versus

ONKARESHWAR PROPERTIES PVT. LTD. .... Respondent
Through: Mr. Ved Jain and Mr. Pranjal Srivastava Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **03.05.2016**

1. This appeal by the Revenue is directed against the order dated 23rd October 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5754/Del/2013 for the Assessment Year ('AY') 2009-10.

2. The question sought to be urged by the Revenue is whether the ITAT was correct in holding that the Assessing Officer ('AO') and the Commissioner of Income Tax (Appeals) ['CIT (A)'] were not right in treating the income of the Assessee as business income and in accepting the plea of the Assessee that the income should be assessed as capital gain from the sale of land?

3. The Assessee was formed with the main object of dealing in real estate.

The Assessee entered into an agreement with M/s Vatika Ltd. in respect of development of its land during the AY in question which it had acquired in the year 2005-06 and had shown as a capital asset. There was no conversion of capital asset into stock-in-trade. The ITAT found that there was no transaction for the AY in question in relation to said capital asset.

4. Significantly, the ITAT noticed that the Assessee had classified the land in question as capital asset from AY 2006-07 onwards. It had not claimed any expenditure in relation to such land. In the accounts for each of the year it had not shown any land being held as stock-in-trade. In the AY 2008-09, a small portion of the land was sold and the loss therefrom was declared as a capital loss and was not set off against any other income. The ITAT held that a mere fact that a development agreement was entered into by the Assessee with Vatika Ltd. would not change the nature and character of the land since in terms of the agreement it was the developer who would undertake the work of development upon being paid a fee by the Assessee. It was also observed that although the main object of the Assessee may be to carry on the business of real estate, that would not prevent the Assessee from holding the land in question as a capital asset. Therefore the income generated through the sale of land would be chargeable to tax under the head capital gains and not as business income.

5. Having heard Mr. Dileep Shivpuri, learned Senior Standing counsel for the Revenue and having examined the orders of the AO, CIT(A) and the impugned order of the ITAT, the Court is not persuaded to agree with the Revenue's submission that the impugned order of the ITAT is perverse.

6. In the facts and circumstances of the present case, no substantial question of law arises for consideration. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 03, 2016
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