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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 583/2016 & C.M.No.29420/2016**

**COMMISSIONER OF INCOME TAX-IV**

..... Appellant

Through: Mr.Zoheb Hossainn, Sr.Standing  
Counsel, Mr.Deepak Anand,  
Jr.Standing Counsel and Mr.Prashant  
Meharchandani, Advocate

versus

**M/S ETHAN ESTATES DEVELOPERS PVT. LTD. ... Respondent**

Through: Ms.Kavita Jha and Ms.Mehak Gupta,  
Advocates

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

% **12.08.2016**

1. The question of law sought to be urged in the revenue's appeal is whether the receipts in the hands of the respondent-assessee to the tune of Rs.58,03,59,600/- in fact amounted to accrued income on grant of development rights.

2. The brief facts are that the assessee – which was incorporated in 2006 for the purpose of engaging in real estate development, purchased 16.33 acres of land at a cost of ₹60.23 crores. It entered into a development agreement dated 05.12.2006 with M/s DLF Commercial Projects Corporation (hereafter referred to as 'the developer'). It received ₹25 crores as interest free deposit at that stage. In terms of the agreement inter alia development rights of the land had to be given to the developer on a consideration of ₹2.10

crore per acre. The consideration was to be paid to the assessee within two years from the “effective date”. That event i.e. the effective date in terms of Article 1.1 of the agreement was the date of completion of purchase of property including mutation in the name of the assessee in the revenue’s record. The development rights of the land amounting to Rs.34,29,49,000/- was brought to tax by the Assessing Officer on accrual basis. Assessee successfully appealed to the CIT (A); revenue failed to secure any relief before the ITAT in the impugned order.

3. This court had in its previous judgment in ***Commissioner of Income Tax-XI vs. M/s DLF Commercial Project Corporation ITA Nos.627/2012 & 507/2013*** decided on 15.07.2015 ruled that the receipt of such amount could not be treated as income. It was precisely held that the method adopted by the assessee of treating income as having accrued at the point of sale of development rights, upon acquisition of license described the transaction and that treating the amount received prior to that event could not be brought to tax as income. The relevant discussion – after noticing the ITAT’s conclusions on this aspect are as follows:

*13. The concurrent findings of fact of the CIT(A) and the ITAT affirm that the LOCs had not acquired any development rights during the concerned assessment years. In such a situation, it is inconceivable as to how the assessee could have acquired such rights from the LOCs, let alone transferring them to M/s DLF Ltd. and CBDL. This Court does not find any basis provided by the Revenue to interfere with ITAT’s finding on this aspect.*

*14. The revenue places reliance on the assessee’s*

*accounting policy – mentioned in Schedule 7 of the auditor's report for AY 2007-08 – which states that 'sale of developed plots is recognised in the financial year in which the agreement to sell executed'. Pertinently, the financial statement for AY 2008-09 states that '[s]ale of development rights is recognized on accrual basis in the financial year in accordance with the terms of the agreements entered into with the customers'. According to the Revenue, the alleged sale by the assessee to M/s DLF Ltd. and CBDL was of 'development rights' acquired from LOCs. However, as held above, since no rights were in fact sold in the two assessment years in question by the assessee to either M/s DLF Ltd. or CBDL, no income from such sale can be brought to tax by the Revenue.*

*15. The assessee follows the accrual system of accounting. The accrual system of accounting takes into consideration all gains and losses pertaining to the accounting period for which income is being ascertained, irrespective of whether income has been actually received or whether expenses were paid out. Similarly, every receipt is not treated as an income of the assessee. The assessee's accounting policy is provided for in Accounting Standard 4, Schedule 9. Para 3 of the schedule deals with recognition of Revenue and Related costs:*

*"Sale of development rights is recognized on accrual basis in the financial year in accordance with the terms of the agreements entered into with the customers".*

*In the instant case, since no sale occurred, no income can be said to have accrued to the assessee. The assessee's submission that sale is deemed to have taken place when proper conveyance is executed, in the circumstances is sound. In the absence of any sale, the revenue's attempt to bring to tax the advances received by the assessee must also fail, given that such advances were not towards any*

*income that the assessee was entitled to receive in the two assessment years. Indeed, the Business Development Agreement dated 02.08.2006 between M/s DLF Ltd. and the assessee and the Memorandum of Understanding dated 06.12.2006 between M/s DLF Ltd., the assessee and CBDL indicate that the advances received by the assessee from M/s DLF Ltd. and CBDL were for sale of development rights. Since the assessee failed to sell any such rights in the two years in question, the advances received cannot be classified as income.*

3. Having considered the submissions, we are of the opinion that there is no ground to differ with the reasoning in ***M/s DLF Commercial Project Corporation***'s case (*supra*). No question of law arises for consideration. The appeal along with the pending application is therefore dismissed.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**AUGUST 12, 2016**

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