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

\+ **ITA 52/2015**

COMMISSIONER OF INCOME TAX – 7, NEW DELHI..... Appellant
Through: Mr. Rahul Chaudhary, Standing Counsel.

versus

ODEON BUILDERS PVT LTD ..... Respondent
Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **05.07.2017**

1. This is an appeal by the Revenue under Section 260A(1) of the Income Tax Act, 1961 (‘Act’) against the order dated 16th May, 2014 of the Income Tax Appellate Tribunal (‘ITAT’) in ITA No. 2685/Del/2012 for the Assessment Year (‘AY’) 2008-09.

2. The question of law urged by the Revenue is whether the ITAT was correct in deleting the addition of Rs. 19,39,60,866 pertaining to the alleged bogus purchases made by the Assessee Company from its group company, Padmesh Realtors Pvt. Ltd. (PRPL)

3. The facts in brief are that the Assessee filed its return of income for the AY 2008-09 declaring an income of Rs.6,16,40,171. Subsequently, a search under Section 132 of the Act was conducted in the Suncity Group of cases. Consequently, a notice under Section 153A of the Act was issued to the

Assessee.

4. The case of the Revenue was that during the course of the assessment proceedings, the Assessing Officer ('AO') observed that the Assessee had entered into purchase transactions with PRPL. The AO required the Assessee to furnish the address of the said company. On the addresses furnished by the Assessee Company, a survey was conducted under Section 133A of the Act. It is stated that on the given addresses, the said entity was found to be non-existent. Accordingly, the AO concluded that PRPL was only used as a conduit to inflate the expenditure of the Assessee. On account of the bogus purchase, the aforementioned addition was made by the AO.

5. Aggrieved by the above order, the Assessee went in appeal before the Commissioner of Income Tax (Appeals ['CIT(A)']. The above addition was deleted by the CIT(A) by the order dated 29th March, 2012 after concluding that the "entire disallowance is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO".

6. The Revenue's consequent appeal was dismissed by the ITAT by the impugned order. The conclusions arrived at by the ITAT were as under:

> i. In support of the claim of purchases made by PRPL, photocopies of the sale invoices issued to it along with the confirmed copy of account with PAN for the financial years 2007-08 as well as 2008-09 were filed. Copies of the VAT returns wherever made available of the 23 parties which had sold the material to PRPL and which in turn sold the material to the Assessee were also filed.

ii. The facts taken into consideration by the CIT (A) were supported by the relevant documents filed in the paper book. All details of the transportation of goods were found mentioned in the invoices, accompanied by the GRs enclosed therewith. The fact that PRPL did not have godown facilities had no relevance in the face of the documents issued by the statutory authorities which were discussed at length. The identity of PRPL and the genuineness of the transactions involving it which were recorded in the normal course of business were supported by the documents on record.

iii. Nothing incriminating was found in the search conducted *qua* the Assessee except two documents. The 'core document' was the ledger account of PRPL in the books of accounts of the Assessee. This clearly reflected the sales made by PRPL to the Assessee on various dates on which payments had been made. This document did not create any doubt about the genuineness of the transactions, particularly in the face of the evidence and enquiries and the responses available on record. These included confirmed copies of all the 23 parties from whom purchases were made by PRPL. The Assessee had also placed detailed evidence for each of the said 23 parties. This was examined afresh by the ITAT.

iv. No material was placed on record by the Revenue to counter the profit & loss and bank details along with confirmed copies of account sales invoices produced by the Assessee. These documents, therefore, could not be disregarded. In fact, the AO had examined the bank accounts of not only PRPL but also of the 23 concerns to whom payments were made by PRPL.

v. The Assessee had discharged the burden of proving the identity of PRPL and the genuineness of the purchases made by the Assessee from it.

7. Having perused the impugned orders of the CIT(A) and the ITAT, and having heard learned counsel for the parties, the Court is satisfied that an exhaustive and detailed factual enquiry has been undertaken, both, by the CIT(A) and the ITAT to arrive at concurrent factual findings which have not been shown to be perverse.

8. No substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 05, 2017

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