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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ITA 1029/2015

COMMISSIONER OF INCOME TAX-5 ..... Appellant
Through: Mr. Rahul Chaudhary, Senior standing counsel.

versus

KASHYAP METAL & ALLIED INDUSTRIES LTD ..... Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha and Ms. Roopali Gupta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **16.05.2017**

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 against the impugned order dated 31st October, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5102/Del/2011 for the Assessment Year ('AY') 2008-09.

2. By an order dated 22nd December 2015, the Court confined the notice issued in this appeal to Question B which reads thus:

> "Whether in the present facts and circumstances of the case, the ITAT has erred in allowing indexation benefit on the borrowing cost when the leasehold right was cancelled on 29th March 1998 and the same was restored back on 6th August 2004?"

3. The facts relevant to the above question are that in 1973 the Assessee, Kashyap Metal & Allied Industries Limited, acquired leasehold industrial land at the Mohan Cooperative Industrial Estate. The Assessee commenced construction of the office premises thereon on a continuous basis. A completion certificate was issued by the Delhi Development Authority ('DDA') on 26th March, 1999. Various improvements were carried out by the Assessee to the premises during the financial year 2005-06.

4. It is stated that in 2003 the Assessee applied to the DDA for conversion of leasehold land into freehold land. On 25th January, 2007, the DDA executed a conveyance deed in favour of the Assessee. The Assessee paid Rs. 3,89,89,196 to the DDA towards conversion charges, other dues, unearned increase charges and stamp duty.

5. On 7th April 2007, the Assessee sold the entire land along with superstructure for a consideration of Rs. 30 crores and offered for tax long term capital gains ('LTCG') in the sum of Rs. 4,07,35,010. In working out the LTCG, the calculation given by the Assessee was under:

Total sale consideration	Rs. 30,00,00,000
Less: Indexed cost of acquisition & improvement on land & building	Rs. 25,58,52,290
Less: Selling expenses (Professional Fees)	Rs. 34,12,700
LTCG	Rs. 4,07,35,010

6. The Assessing Officer ('AO') has, in the order of the assessment dated

30th December 2010 determined the LTCG at Rs. 5,08,54,387. The AO worked out the LTCG as under:

> "A Indexed cost of land Rs. 1,25,25,589/-
>
> B Indexed cost of construction/improvement Rs. 16,16,75,673/-
>
> C Cost of interest payment Rs. 3,25,42,455/-
>
> D Other Charges related to transfer Rs. 34,12,700/-
>
> Hence total cost of Long term asset transferred is A + B + C + D = 21,01 ,56,417. Therefore, Long term capital gain accruing to Assessee is Rs. 26,10,10,804- Rs. 21,01,56,417 = Rs. 5,08,54,387/-"

7. Accordingly, a sum of Rs. 1,01,19,377 was added to the total income of the Assessee.

8. Aggrieved by the above order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) ('CIT (A)') who, by an order dated 19th July, 2011, upheld the aforementioned addition made by the AO. The Assessee then further appealed to the ITAT which by the impugned order dated 31st October, 2014 allowed the appeal. The ITAT set aside the finding of the CIT (A) and held that the land sale was a long term capital asset and the entire gain accruing on such transfer was taxable as LTCG only. The ITAT also allowed the indexation benefits on the borrowing cost as already permitted by the AO in the assessment order.

9. Mr. Rahul Chaudhary, learned Senior standing counsel for the Appellant/Revenue, submits that there was no warrant for allowing the indexation on interest cost for the period during which the Assessee was not in fact in control or possession of the land in question. Mr. Chaudhary points out that the lease stood cancelled and restored and therefore, the interest cost

for the said period could not be allowed to be indexed.

10. The ITAT has noted that there was termination of lease hold rights on 29th March, 1998 and these were restored only on 6th August, 2004. The borrowing costs were recorded in the books of accounts year after year. The interest cost on a year-to-year basis was capitalized under the head 'capital work in progress' which was later transferred to building accounts. Thus, the ITAT pointed out, it would be a fallacy to suggest that such borrowing cost in the shape of interest was not incurred for the development of the property.

11. As explained by this Court in ***Commissioner of Income Tax v. Mithlesh Kumari (1973) 92 ITR 9 (Del)***, the interest amount constituted part of the actual cost of the land. In fact the AO has in the assessment order calculated the LTCG by including the interest cost. It has been noted by the CIT (A) that the construction activities were carried out continuously and uninterruptedly even during the period when the lease was cancelled and later restored. Consequently, the Court finds no error having been committed by the ITAT in restoring the indexed interest cost as directed by the AO.

12. No substantial question of law arises in relation to the above issue. The appeal is, accordingly, dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 16, 2017/*Rm*