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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No. 375/2015

PR. COMMISSIONER OF INCOME TAX – 3 Appellant

Through: Mr. Raghvendra Singh, Mr. Ashok
Manchanda, Sr. Standing Counsel.

versus

**DELHI STATE INDUSTRIAL INFRASTRUCTURE
DEVELOPMENT CORP. LTD.**

..... Respondent

Through: Ms. Anusuya Salwan, Advocate with
Ms. Nikita Salwan, Advocate along with Mr.
Mukesh Srivastava, OSD (Taxation)

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

17.08.2017

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Dr. S. Muralidhar, J.:

1. The Revenue is in appeal against an order by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1450/Del/2012 for the Assessment Year ('AY') 2008-09.

2. At the outset, it requires to be noticed that there is some confusion about the date of the impugned order of the ITAT *qua* the issue that has been raised in the present appeal of the Revenue. The issue raised concerns the treatment to be accorded to the maintenance charges and ground rent received by the Respondent-Assessee from allottees of plots that have been

entrusted to it for development. According to the Revenue, both the ground rent and maintenance charges ought to be treated as the income of the Assessee whereas according to the Assessee they do not form part of its income.

3. The date given by the Revenue for the impugned order of the ITAT is 19th December 2014. A perusal of the said order reveals that it deals with only one of the issues that arose in ITA No. 1450/Del/2012 filed by the Revenue, viz., the interest received from income tax refund. On this issue there was a difference of opinion between the two members of the ITAT which first heard the appeal. While Mr. Mehrotra (Accountant Member) held it to be not part of the income of the Assessee, Mr. Bedi (Judicial Member) held to the contrary. A reference was then made to the Third Member (Mr. D. Manmohan) who by his opinion dated 12th September 2014 concurred with the Judicial Member holding that interest on income tax refund has to be treated as income from other sources. After the Third Member gave his opinion, the appeal was listed before the two member bench of the ITAT which passed the final order dated 19th December 2014 by which it partly allowed the Revenue's appeal. Thus, the appeal was finally disposed of on that date.

4. As far as the issue which arises in the present appeal concerning the ground rent and maintenance charges, there was obviously no difference of opinion between the two members who heard the Revenue's appeal in the first instance. An undated and unsigned order of the ITAT comprising the two members, Mr. U. B. S. Bedi and Mr. S. V. Mehrotra has been placed

before the Court. It decided this issue in favour of the Assessee by following an earlier order of the ITAT for AY 2005-06. Although this order is undated, the Court has been shown the separate opinion of Mr. U. B. S. Bedi which appears to be signed by him on 11th February 2014 the opening paragraph of which reads as under:

“Despite best persuasion of myself, I have not been able to concur with the findings or conclusion as drawn by Ld. Accountant Member on the issue of interest received on income tax refund to the extent of Rs.36.94 lacs **whereas, on all other points in the appeal, I fully agree**, therefore, my reasons for not being agreeable on the said issue are as under:” (emphasis supplied)

5. From the above paragraph it is clear that Mr. Bedi, on 11th February 2014, agreed with Mr. Mehrotra on the issue with which the present appeal is concerned, i.e. the issue of ground rent and maintenance charges. Therefore, as far as this issue is concerned, it must be taken that the ITAT formed its final view on 11th February 2014, i.e. the date of Mr. Bedi’s signed opinion.

6. The next question is whether the present appeal, which was filed by the Revenue on 30th May 2015, is time barred. Mr. Raghvendra Singh, learned Senior Standing Counsel for the Revenue, points out that the entire bunch of orders of the ITAT was not received by the Revenue earlier than 30th January 2015. It was only on 19th December 2014 that the final order in the appeal was passed and, along with the said order, the order dated 11th February 2014 as well as the unsigned order of the Bench of the ITAT deciding the issue raised in the present appeal was received. He points out that since the starting date for the purposes of limitation is 30th January,

2015, the appeal filed in this Court on 30th May 2015 is within time.

7. There is no dispute that the Department received the impugned final order dated 11th February 2014 of the ITAT deciding the issue that arises in the present appeal, along with the order dated 19th December 2014, only on 30th January 2015. Consequently, the present appeal has been filed in time in terms of Section 260 A (1) of the Income Tax Act 1961 ('Act'). With the issue of limitation out of the way, the Court proceeds to deal with the appeal on merits.

8. Admit.

9. The following question of law is framed for consideration:

Was the ITAT justified in confirming the order of the Commissioner of Income Tax (Appeals) treating, both the maintenance charges as well as the ground rent collected by the Assessee as not forming part of its income and thereby deleting the addition made by the AO on that account?

10. The background facts are that the Respondent-Assessee is awarded projects by Delhi Government for relocation of industries, common effluent treatment plants and development works of the Narela Industrial Complex Scheme. The Assessee borrows loans and advances from the Government of India and other sources for carrying on the projects. The Assessee's case is that the interest earned on the amounts borrowed by it is credited to the respective funds/schemes and not to the Profit and Loss (P&L) account of the Assessee.

11. There is what is called the Narela Revolving Fund. The interest on this fund is credited to the said fund and not the P&L Account of the Assessee. The present appeal, however, is not concerned with the treatment of the interest on such revolving fund. The question here concerns the treatment of the ground rent and maintenance charges collected by the Assessee from the allottees in the low cost housing scheme.

12. It appears that the Assessing Officer ('AO') made an entry in the order sheet in the assessment proceedings, on 23rd December 2010, calling upon the Assessee to explain why the ground rent and maintenance charges should not be added back to its income. The Authorized Representative ('AR') of the Assessee, by a letter dated 30th November 2010, submitted as under:

“The observation pertains to low cost housing scheme. The ground rent is not a part of the Income of the Corporation. However the maintenance charges received will be shown as income of the Corporation during the current financial year.”

13. The AO, however, rejected the above explanation. The basis for considering the ground rent and maintenance charges differently was not, according to the AO, properly explained by the Assessee. Consequently, the entire sum of Rs. 2,04,57,847/-, shown in the balance sheet of the Assessee as a receipt, was added back to the income of the Assessee.

14. An appeal was filed by the Assessee against the above order. The Commissioner of Income Tax (Appeals) ['CIT (A)'], by the order dated 24th January 2012, referred to the decision of the ITAT in the Assessee's

own case for the earlier AYs where the amounts received towards maintenance charges were directed to be deleted. It was observed that the said amount had been “received in trust for a specific performance and, therefore, should not be treated as an income in the hands of the Assessee”. Although the said observation pertained only to the maintenance charges, the CIT (A) directed the deletion of the entire sum which represented both the maintenance charges as well as the ground rent.

15. Aggrieved by the above order, the Revenue went in appeal before the ITAT. In the impugned order of the ITAT pertaining to this issue, the ITAT followed its order for the earlier AY and sustained the deletion ordered by the CIT (A).

16. At this juncture, it must be mentioned that Ms. Anusuya Salwan, the learned counsel appearing for the Assessee, has placed before the Court the orders of the ITAT for the earlier AYs, including 1991-92, 1992-93, 2003-04 and 2005-06 wherein, throughout, the ITAT has decided the issue of maintenance charges in favour of the Assessee and against the Revenue.

17. Mr Raghvendra Singh, learned counsel for the Revenue, on the other hand pointed out that the Revenue challenged the order of the ITAT for the immediate earlier AY, i.e. AY 2007-08, before this Court. The said appeal, specific to the issue of maintenance charges, came to be decided in its favour by this Court by the order dated 6th August 2012 in ITA No. 1207/2011 (*CIT v. Delhi State Industrial and Infrastructure Development Corporation Ltd.*) This Court, in the said order, took note of the fact that, in the earlier AYs the ITAT had decided the issue regarding

maintenance charges in favour of the Assessee and against the Revenue. Nevertheless, the Court observed:

“However, the essential characteristic as an income or sums received by the Assessee cannot be denied. There is no trust under which the assessee can be said to hold the receipts. The assessee is collecting the maintenance charges for maintaining the properties of the housing scheme, and obviously for defraying the expenses. The receipts are its own and merely because some expenditure is required to be incurred on maintenance, the funds collected do not become funds kept or held in trust. The assessee's books would of course reflect the actual expenditure incurred which would naturally be permitted to be claimed as expenses. We also notice that the assessee had agreed as follows by its letter dated 29.10.2009:

“The observation pertains to low cost housing scheme. The ground rent is not a part of the Income of the Corporation. However the maintenance charges received will be shown as income of the Corporation during the current financial year.”

18. Consequently, for AY 2007-08, this Court accepted the plea of the Revenue that maintenance charges collected by the Assessee has to be treated as part of its income.

19. For some reason, the above decision was not challenged further in the Supreme Court by the Assessee. This Court having decided the issue of maintenance charges in favour of the Revenue and against the Assessee for AY 2007-08, there is no reason, particularly, without any change in the circumstances in the present AY i.e. 2008-09, for the Court to take a different view in the matter as far as the maintenance charges are concerned.

20. Consequently, the impugned order of the ITAT for this AY 2008-09 on

the issue of maintenance charges is hereby set aside and the order of the AO *qua* the maintenance charges being treated as income of the Assessee is restored to file. For giving appeal effect to this part of the order, the matter has to go back to the AO since what is shown in the balance sheet of the Assessee is a composite figure of receipt of ground rent and maintenance charges.

21. Now coming to issue of treatment of ground rent, the Court finds that the decisions of the ITAT, and even the decision of this Court for AY 2007-08, did not specifically deal with the issue of ground rent. On instructions, it has been submitted by Ms. Salwan, the learned counsel appearing for the Respondent-Assessee, that the Assessee has never treated the ground rent collected from the allottees as a receipt in its hands but has held it for and on behalf of the Government of NCT of Delhi, She states that even the interest earned on such amount is not credited to the P&L Account of the Assessee.

22. Mr. Raghvendra Singh, learned counsel for the Revenue, on the other hand, contends that the depiction of the said amount in the accounts of the Assessee may not be conclusive of the nature of the receipt for the purposes of the income tax. According to him, the ground rent in its essential characteristic, having been collected from the allottees of the plots, can be no different from maintenance charges collected from the allottees.

23. The Court finds that this issue was not examined in depth with reference to the accounts of the Assessee either by the AO or the CIT (A) or even the ITAT. They appear to have treated both the maintenance charges and ground rent alike whereas the decisions of the ITAT in favour of the Assessee, even

for the earlier AYs, were specific to the issue of maintenance charges and not ground rent. Consequently, the impugned orders of the ITAT, the CIT (A) as well as the AO on the issue of ground rent for this AY 2008-09 is hereby set aside and the said issue is remanded to the file of the AO for re-determination in accordance with law after examining the accounts of the Assessee and any further evidence that may be led on this issue by the parties.

24. The question framed as regards maintenance charges is answered in the negative i.e. in favour of the Revenue and against the Assessee. However, the issue concerning ground rent is remanded to the AO for a fresh determination in the above terms. The appeal is disposed of accordingly with no order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 17, 2017
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