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

\+ **ITA 719/2017**

BRIJ BHUSHAN AGGRAWAL ..... Appellant

Through: Ms. Anu Sura, Adv. for Mr. Sameer Jain, Advocate

versus

OFFICER OF INCOME TAX ..... Respondent

Through: None

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 30.08.2017

CM 31478/2017 (exemption)

1. Allowed, subject to all just exceptions.

ITA 719/2017 & CM No.31479/2017 (stay)

2. This is an Assessee's appeal against an order dated 24th April, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 214/Del/2017 for the Assessment Year 2014-15.

3. The Assessee filed return of income for the Financial Year 2012-13 on 13th August, 2014 showing the income from long term capital gain (LTCG)/loss as well as income from other sources and net agricultural income. In all, the Assessee declared an income of Rs.3,00,090/-. In the Assessment Order dated 26th November, 2015 under Section 143(3) of the Income Tax Act, 1961 ('the Act'), the Assessing Officer (AO) found that the Assessee had sold 20 bighas of land for a total sale consideration of

Rs.70,54,000/-. In the computation of LTCG, the Assessee claimed to have incurred expenses of Rs.9,78,125/- on account of filling of soil in Bhatta land. The AO by means of Order Sheet Entry dated 6th October, 2015 asked the Assessee to substantiate this claim. In response thereto, the Assessee filed his personal affidavit on 9th November, 2015 stating that he had invested Rs.5 Lakhs on contract basis for the purpose of filling up of land including the cost of soil, loading transportation of soil, unloading and levelling of land in the year 2004. He claimed that he had not maintained the books of accounts for the said expenses. In the absence of any proof of having spent the above amount, the AO added the said amount to the returned income of the Assessee.

4. The Assessee then carried the matter in appeal to the Commissioner of Income Tax (Appeals) [‘CIT(A)’]. By the order dated 4th October 2016, the CIT (A) dismissed the appeal on the ground that even during the appellate proceedings, the Assessee could not furnish any evidence to support his claim.

5. The Assessee then approached the ITAT. It is seen from the impugned order of the ITAT that the Assessee sought to submit some additional evidence in the form of Certificate of Licence granted by the Municipal Corporation of Muzaffarnagar dated 14th January, 2005 and the Affidavit dated 21st December, 2016 of the Sarpanch of the village. The ITAT however declined to permit the Assessee to rely on such additional evidence. The ITAT concurred with the CIT (A) and dismissed the appeal.

6. This Court has perused the additional evidence produced by the Assessee

before the ITAT. It does not advance the case of the Assessee any further. The mere fact that a Certificate of Licence was issued to the Assessee for running a kiln on the Bhatta land in question furnishes no proof of the expenditure of Rs.9,78,125/- incurred by the Assessee in filling it up. The certificate of Sarpanch again says very little about the actual expenditure incurred. It merely states that almost 10 to 12 years ago, the filling of bricks on the land had been done by the Assessee at a high cost. Such a certificate without any documentary basis does not help the Assessee's case.

7. Consequently, this Court is unable to find any legal infirmity in the concurrent findings of the CIT (A) and the ITAT that the Assessee was unable to substantiate the claim of having incurred expenses of Rs. Rs. 9,78,125/- in filling up the land.

8. No substantial question of law arises from the impugned order of the ITAT. The appeal and the application are accordingly dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 30, 2017
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