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

+ ITA 543/2015

PR. COMMISSIONER OF INCOME TAX-6 Appellant
Through: Mr. Raghvendra Singh, Advocate.

versus

MODIPON LIMITED Respondent
Through: Mr. Santosh K. Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

30.01.2017

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The question of law urged by the Revenue is “whether having regard to Section 50 (C) of the Income Tax Act, 1961, the additions made by the Revenue in the course of assessment for Assessment Years 2005-06, were justified.” The assessee had sold a plot by sale deed dated 16.09.2004. The capital gains were brought out and offered to the tax authorities. The Assessing Officer sought recourse to Section 50 (C) (1) of the Income Tax Act, 1961 noticing that the circle rate had undergone an upward revision by 16.09.2004. The agreement to sell the property was entered into by the assessee with the purchaser on 27.05.2004. In accordance with local laws that agreement too was registered; it evidenced a receipt of ₹60 lacs which

was paid by them as advance. According to the terms of the agreement three further instalments were payable - on 25.06.2004, 20.07.2004 and 31.08.2004. The payments were actually made few days later in the course of second and third instalment. The total consideration was ₹2,62,08,000/-, however, by the time the sale deed was executed, i.e., 16.09.2004, the circle rate was increased to ₹20,000/- per sq. mtr.

The Assessing Officer proceeded to adopt the higher circle rate for the entire transaction and applied Section 50 (C) of the Income Tax Act. The assessee was unsuccessful before the CIT (A) who upheld the gains so determined by the Assessing Officer.

The ITAT relied upon the ruling in *Sanjeev Lal v. CIT*, (2014) 365 ITR 389 (SC) and the ITAT (Vizag) decision in *M/s Lahri Promoters v. ACIT* - ITA No.12/Vizag/2009.

The Revenue urges that the only exception to Section 50 (C) is the second sub-section which enables the Assessing Officer to determine the market value upon an examination by the DVO if reference is sought. Not having sought recourse to such relief, the Assessing Officer was bound to apply strictly the terms of the provisions, i.e., Section 50 (C) (1). The rule of valuation mandated by the provision was that the circle rate prevailing on the date of the ultimate sale had to be treated as the transaction value. In the present case, the AO, therefore, was justified in making the additions to the capital gains reported and the ITAT erred in law in setting it aside.

This Court is of the opinion that the ITAT in the present case

undertook a close factual analysis to determine that in fact the transaction value was reflected in the sale deed which was ultimately registered. The record would indicate that two deeds were executed, i.e., first on 27.05.2004 which too was registered in accordance with the provisions of the local laws. That agreement contained stipulations as to the payments and the time period within which all amounts were to be made over to the seller. It is again not in dispute that these payments were in fact made substantially within the time period so stipulated. In the meanwhile, some time after 27.05.2004 and before the date of registration of the sale deed, i.e., 16.09.2004, there was an upward revision of the circle rates - to the extent of almost 60%. That has triggered a strict application of Section 50 (C).

This Court is of the opinion that where there is adequate external evidence supporting the assessee's case that the transaction has been recorded and been reflected objectively in the form of a registered instrument (agreement to sell dated 27.05.2004), and all subsequent payments made have adhered to the time schedule agreed upon in respect of the amounts, the application of Section 50(C) would be unwarranted. The ITAT's conclusion that the transaction was covered by two deeds, both of which characterised as sale deeds though not strictly correct in one sense, describes the nature of the agreements between the parties. Quite possibly there can be a situation like the present one where transaction recorded in the agreement to sell are acted upon over a period of time - and in the interregnum the circle rates are increased. Application of Section 50

(C) in such cases would result in extreme hardship. Parliament has recognized this mischief and has added proviso to Section 50 (C) (i) w.e.f. 01.04.2017.

Having regard to the forgoing reasons, the Court is of the opinion that no question of law arises; the appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 30, 2017
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