IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

T.C.A.No.369 of 2017

The Commissioner of Income Tax,
Chennai. .. Appellant

-vs-

M/s.Adroit Urban Developers Pvt. Ltd.,
No.1, Bheemanna Garden Street,
Alwarpet, Chennai 600 018. .. Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 26.12.2016 passed in I.T.A.999/Mds/2016 by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, in respect of Assessment Year 2010-11 against the order of Deputy commissioner of Income Tax-Corporate circle-1(1) Chennai-34, dated 27.01.2016 in ITA.No.369 /13-14-A1 and against the Order of Commissioner of Income Tax (appeals)-1-Chennai-34 dated 27.01.2016, in ITA.369/13-14/A1- and arising out of the Assessment order of out of the Assessment Order of Deputy Commissioner of Income -Tax, Company Circle -1(1), Chennai, dated 28.03.2013 in GIR/PAN AX -7162, AAFCA9741A

For Appellant : Mr.T.Ravikumar

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

This appeal filed by the Revenue is against a judgment and order dated 26.12.2016 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dismissing the appeal being I.T.A.No.999/Mds/2016 filed by the Revenue against an order of the learned Commissioner of Income Tax (Appeals)-1, Chennai, dated 27.01.2016 in ITA No.369/13-14/A-1 (New No.ITA 217/CIT(A)-1/A-1), to the extent that the Appellate Commissioner had partly allowed the appeal of the respondent assessee, and directed the Assessing Officer to delete the addition of Rs.2,03,27,768/- in the Assessment year 2010-11 towards alleged sales suppression.

2. The respondent/assessee, hereinafter referred to as "the assessee", is a company engaged in property development. The assessee had undertaken the commissioning of project 'Auro One' consisting of 19 units. The assessee sold two flats being G3 and F4 at Rs.4,129/- and Rs.4,000/- per sq.ft. respectively to its sister concern, whereas other flats had been booked at Rs.8,000/- to Rs.9,000/- per sq.ft.

3. The assessee filed its return of income on 15.10.2010 for the Assessment Year 2010-11 claiming loss of Rs.58,85,493/-. On 31.03.2011, a revised return was filed for the same Assessment Year claiming loss of Rs.36,09,239/-.

4. The return filed by the assessee was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the IT Act'). The case was, thereafter, selected for scrutiny and notice under Section 143(2) of the IT Act was issued on 26.08.2011. It appears that after hearing the assessee, the Assessing Officer completed the assessment under Section 143(3) of the IT Act on 28.03.2013 determining the total income of the assessee at Rs.1,71,13,177, after making an addition of Rs.2,03,27,768/- towards alleged sales suppression and after disallowance of Rs.2,09,383/- under Section 94(7) of the IT Act and Rs.1,85,266/- under Section 14A of the IT Act.

5. Being aggrieved, the assessee filed an appeal before the Commissioner of Income-tax (Appeals)-1, Chennai, hereinafter referred to as "Appellate Commissioner", being I.T.A.No.369/13-14/A1, later re-numbered as I.T.A.No.217/CIT(A)-1/A-1. The appeal was filed in relation to disallowance of Rs.1,85,266/- under Section 14A of the IT Act and addition of suppression of sales to the extent of Rs.2,03,27,768/-. By an order dated 27.01.2016, the Appellate Commissioner rejected the challenge to disallowance under Section 14A to the tune of Rs.1,85,266/-, but allowed the appeal to the extent that the Assessing Officer had added Rs.2,03,27,768/- towards alleged suppression of sales.

6. It appears that the Assessing Officer had added the difference of the price at which the two flats has been sold to sister concerns and the price offered to the assessee by third parties amounting to Rs.2,03,27,768/-. The Assessing Officer found that the assessee company had, in order to reduce its taxable income, entered into an agreement with it's sister concern and received Rs.1.60 crores at the rate of Rs.4,000/- and Rs.4,129/- per sq.ft. in respect of Flat Nos.G3 and F4 respectively, whereas other flats were booked at Rs.8,000/- to Rs.9,000/- per sq.ft.

7. The issue before the Appellate Commissioner was, whether the differential price between the price of two flats sold to

the sister concern and the price offered by third parties could tantamount to suppression of sales.

8. The Appellate Commissioner found that the assessee had been incorporated in 2006 and 'Auro One' was the first Joint Venture project of the company. In consideration of business exigencies, the assessee had received funding from its sister concern, M/s.Siddharth Apparels P Ltd. (SAPL). The advance was free of interest and it was in consideration of such advance that the appellant had agreed to sell two flats at pre-determined price of Rs.4,129/- and Rs.4,000/- per sq.ft. respectively to SAPL. The advance so received had been paid to the land owner on 22.07.2006, within the days of receiving the same from SAPL. The concessional price was to compensate SAPL for the interest free advance. The Assessing Officer was, thus, directed to delete the addition of Rs.2,03,27,768/-.

9. Being aggrieved, the Revenue appealed to the Tribunal. The appeal has been rejected by the order under appeal. The learned Tribunal held that:

> "From the facts of the case, it is apparent that there was a valid reason for the assessee to reduce the sale price of the flats to related parties because the assessee had received advance of Rs.1.06 crores for executing its project from its related parties. Moreover, though the transactions are between the companies, all the shareholders in those companies are members of the same family and effectively they have retained two flats from the project. Moreover, the reason for reduction of sale consideration is also genuine because if the assessee had not received such advance from the buyer it would not have been possible to execute the project. Considering these facts, we are of the considered view that the learned Commissioner of Income Tax (Appeals) has rightly decided the issue in favour of the assessee. Therefore, we do not find it necessary to interfere with the order of the Ld.CIT(A). Hence we hereby confirm the same."



10. The Appellate Commissioner as also the learned Tribunal concurred in their factual finding that there had been no suppression of sales. The two flats were sold at a discount price, for business exigencies and in particular, to compensate SAPL, who had advanced interest free loan to the assessee.

11. It is clear from the language of Section 260A of the IT Act and also well settled by a plethora of judgments of the Supreme Court and of this Court that an appeal under the aforesaid section shall lie to the High Court from every order

passed in appeal by the Appellate Tribunal only if the High Court is satisfied that the case involves a substantial question of law. In this case, the Appellate Commissioner and the learned Tribunal have arrived at the concurrent factual finding that there was no suppression of sales. There is no question of law, not to speak of substantial question of law. As held by the Supreme Court in Vijay Kumar Talwar v. Commissioner of Income Tax, Delhi, reported in (2011) 1 SCC 673, the general rule is that the High Court does not interfere with concurrent findings of Courts below.

12. We find no reason to interfere with the concurrent factual findings arrived at by the Appellate Commissioner and the Appellate Tribunal respectively.

This Tax Case Appeal is, thus, not entertained and the same is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

sra/sasi

To

1.The Registrar,
Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.

2.The Commissioner of Income-Tax
(Appeals)- 1, Chennai.

3.The Deputy Commissioner of
Income-tax, Company Circle-I(1),
Chennai.

4.The Assistant Registrar,
Income Tax appellate Tribunal,
III nd Floor, Rajaji Bhavan,
Besand Nagar, Chennai-90

+1cc to Mr.T.Ravi Kumar, Advocate SR.No.173

T.C.A.No.369 of 2017

CNR(CO)
GN(27/02/2018)