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

\+ ITA 1158/2018

PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL)-2

..... Appellant

Through : Mr.Sanjay Kumar with Mr.Asheesh Jain, Advocates.

versus

M/S SAGA TOWNSHIP PVT. LTD. ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% 23.10.2018

Present appeal filed by the Revenue under Section 260A of the Income Tax Act 1961 (hereinafter referred to as the 'Act') impugns the order dated 30.05.2018 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') deleting penalty of Rs.83,00,000/- imposed under Section 271D read with Section 269SS of the Act.

2. M/s. Saga Township Pvt. Ltd. ('respondent-assessee' for short) is a company which had entered into a joint venture with M/s Saamag Construction Ltd. vide Memorandum of Understanding (MoU) dated 02.06.2006.

3. M/s. Saamag Construction Ltd. had paid total amount of

Rs.83,00,000/- on different dates to the respondent-assessee in cash.

4. The Assessing Officer had treated these payments as loan or deposit paid by M/s. Saamag Construction Ltd. to the respondent/assessee. The Penalty Order dated 25.02.2013 observes that the respondent-assessee and M/s Saamag Construction Ltd. were sister companies and both had in the books recorded the relevant transactions under the head of unsecured loans and advances respectively. Further transactions for the purpose of buying land were not excluded under the proviso to Section 269SS of the Act. Accordingly, penalty of Rs. 83,00,000/- was imposed under Section 271D of the Act.

5. The penalty was, however, deleted by the Commissioner of Income Tax (Appeals) vide order dated 25.10.2013, who held that the payment pursuant to the MoU was to develop an integrated township in Rudra Pur (Uttarakhand). The respondent-assessee was to purchase the land and develop the same in association with M/s Saamag Construction Ltd. Latter was responsible for arranging finance for the project. Accordingly, M/s Saamag Construction Ltd. had provided funds on different dates. Rs. 53,21,800/- was used to pay sale consideration to farmers/land owners and Rs. 28,54,400/- was for payment of stamp duty. Further, the Assessing Officer had not disputed genuineness of transactions between the respondent-assessee and M/s Saamag Developers Pvt. Ltd.

6. Aggrieved, the Revenue filed an appeal before the Tribunal, which upheld the finding of Commissioner of Income Tax (Appeals) holding:-

> *"We have heard the rival submission and perused the relevant material on record. The fact that amount mentioned by the Ld. Additional Commissioner of Income Tax in the impugned order, have been received consequent to the Memorandum of Understanding (MOU) among the parties i.e. the assessee, M/s Saamag construction Limited and M/s Saamag developers Private Limited, has not been disputed by the Revenue. In furtherance of the MOU, the assessee received payment and made payment in cash for token money as well as for a stamp duty. The only argument of the Ld DR is that those transactions have been recorded in balance sheets of the companies as unsecured loans. In our opinion, when payments have been received in cash in terms of MoU in relation to business purpose, the purpose of transaction is business transaction and same cannot be treated as loan/deposit irrespective of the manner in which accounting entries have been made in the books of accounts. In substance, the transactions are business transactions. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned. Further, the amounts are been received in cash for payment to farmers as well as payment to government accounts for a stamp duty. The contention of the assessee that it could not comply with the requirement of section 269SS due to reasonable failure on its part, has also been considered by us. The argument of the Ld. counsel is justified to some extent as it is generally known that while purchase of land, farmers accepted sometimes by stamp duty authorities. In our opinion, it constitutes a reasonable cause for not adhering to the provisions of section 269SS by the assessee."*

7. Learned counsel for the respondent-assessee has drawn our attention to the MoU dated 02.06.2006 and submits that the respondent-assessee was obligated to purchase land in its own name and develop the same in association with M/s Saamag Construction Ltd.

8. The MoU however also records that all costs relating to the project shall be financed by M/s Saamag Construction Ltd. There was a stipulation that development cost/expenses and promotional expenses shall be borne by the respondent-assessee and upon completion of the project, net profit shall be distributed equally between them.

9. We are of the view that the findings recorded by the Tribunal cannot be said to be perverse and contrary to facts and law. To attract provisions of Section 269SS, the amount paid in cash must be either loan or deposit. In the present case the respondent-assessee and M/s Saamag Construction Ltd. had entered into a joint venture and payments were made by M/s Saamag Construction Ltd. in terms of the MoU. These payments were not to be refunded. Essential attributes of a loan or deposit, is the right to claim payment and obligation to re-pay. This was missing. On completion of project, the net profit was to be distributed between the respondent-assessee and M/s Saamag Construction Ltd. It is a well settled principle applicable to income tax that entry in the books of account on description and treatment is not decisive as to the nature of the transaction as held by the Supreme Court in **Kedarnath Jute Mfg. Co. Ltd. Vs. CIT** [1971]82 ITR 363 (SC).

10. Clearly Section 269SS of the Act does not apply to every transaction. Therefore Section 269ST of the Act was enacted by Finance Act, 2017 w.e.f. 01.04.2017. This section postulates that no person shall receive an amount of Rs. 2,00,000/- or more in aggregate in cash from any person in respect of a single transaction or in respect

of transactions relating to one event or occasion, otherwise than by way of account payee cheque, account payee bank draft or by way of electronic clearing system through a bank account. The said Section 269ST of the Act is not applicable to the present assessment year.

11. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed in *limine*.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 23, 2018

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