$~3

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

\+ **ITA 183/2019**

THE PR.COMMISSIONER OF INCOME TAX-6 .... Appellant
Through Mr. Ruchir Bhatia, Advocate

versus

BRIJ MOHAN MAHAJAN ..... Respondent
Through Ms. Ananya Kapoor & Mr. Salil Kapoor, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R
% **05.07.2019**

CM Appl.No. 9283/2019 (delay)

1. For the reasons stated in the application, the delay of 252 days in re-filing the appeal is condoned and the application is disposed of.

ITA No. 183/2019

2. This appeal by the Revenue is directed against the order dated 27th December, 2017 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 608/Del/2012 for the Assessment Year 2007-08.

3. The question sought to be urged by the Revenue is whether the ITAT was justified in deleting the addition of Rs. 6,98,00,000/- made by the Assessing Officer on account of unaccounted investment?

4. The facts are that a search and seizure operation under Section 132 of the

Income Tax Act, 1961 ('the Act') was carried out in Nimitaya Group of Companies on 6th November, 2008. A search warrant was issued and executed in the name of the Respondent Assessee.

5. The Assessee filed its return of income on 3rd February, 2007 declaring an income of Rs. 6,09,466/-. The return was taken up for scrutiny assessment and was framed by the AO on 30th December, 2010 under Section 143(3) of the Act.

6. *Inter alia*, it was noted that during the search operation, an unsigned 'Agreement to Sell' was found in terms of which Shri Virender Kumar Mittal, Shri Ravinder Kumar Mittal and M/s Bluebird Software Private Limited (Sellers) had agreed to sell the shareholding in the said company along with an industrial plot at Gurgaon to Shri Sanjeev Mahajan and M/s Nimitaya Promoters Private Limited as buyers for a total consideration of Rs. 21.96 crores. Additionally, a signed Agreement to Sell dated 15th June, 2007 was found in terms of which the sellers had agreed to sell 2,10,000 shares of M/s Blue Bird Software Private Limited along with factory premises to the Respondent and Shri Sanjeev Mahajan for total sale consideration of Rs. 8 crores.

7. Since two different values were found in different agreements, the Assessee was asked to explain why the sum of Rs. 6.98 crores should not be treated as an unaccounted investment for the year under consideration. In response to the query, by letter dated 27th December, 2010, the Assessee gave an explanation which was rejected by the AO on the ground that such a

plea was not taken during the course of the investigation or assessment proceedings. On the basis of the said documents, the AO came to the conclusion that a sum of Rs. 13.96 crores was payment made outside the books of accounts for that year and therefore should be taken as undisclosed income. Being 50% of the share thereof, Rs. 6.98 crores was added to the income of the Assessee.

8. The Commissioner of Income Tax (Appeals) ['CIT(A)'] upheld the order of the AO by dismissing the appeal of the Assessee by an order dated 21st November, 2011. Thereafter the Assessee filed ITA No. 608/Del/2012 before the ITAT.

9. In the impugned order dated 27th December, 2017 the learned ITAT took note of the fact that the property purchased by the shareholders of the said company by way of take over of ownership and management was referred to a Departmental Valuation Officer (DVO). In his report dated 18th June, 2010 the DVO valued the property Rs. 7.11 crores. This was despite the DVO having complete knowledge of the unsigned agreement, which was much lesser than the total amount that was revealed from the two agreements found. It was noted by the ITAT that presumption could only be made under Section 132 (4A) of the Act and that too was rebuttable. The matter was referred to the DVO after the seizure of the aforementioned document. The DVO concluded that the property was worth Rs. 7.11 crores and the AO could not have disputed that finding. It was also noted by the ITAT that "the sale price on the basis of signed documents is accepted by the department in the hands of sellers of the property or shareholders of Bluebird Software

Private Limited."

10. This Court concurs with the ITAT that indeed the AO could not have rejected the report of the DVO since it was at his instance that it was prepared. The CIT (A) also appears to have missed this aspect while dismissing the appeal of the Assessee. In light of the report of DVO, there was no justification for the AO to have added Rs. 6,98,00,000/- to the income of the Assessee on the basis of the unsigned documents.

11. The Court finds that the impugned order of the ITAT does not suffer from any legal infirmity and does not give rise to any substantial question of law.

12. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 05, 2019
mw