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

\+ W.P.(C) 5100/2022 & C.M.Nos.15145-15146/2022

AVANTHA REALTY LIMITED ..... Petitioner

Through Mr.Neeraj Kumar Gupta, Advocate.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-20 ..... Respondent

Through Mr.Zoheb Hossain, senior standing counsel with Mr.Vipul Agrawal and Mr.Parth Semwal, Advocates.

% Date of Decision: 28th March, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Petition has been filed seeking quashing of the impugned Show Cause Notices dated 23rd February, 2022 and 14th March, 2022 issued for the Assessment Year 2018-19.

2. As per the impugned Show Cause Notices dated 23rd February, 2022 and 14th March, 2022, a calculation of long term capital gain on the sale of property bearing no.40, Amrita Shergil Marg for total sale consideration of Rs.378 crore was submitted by the Petitioner. However, during survey proceedings, the Sale Deed was impounded as the property cost according to circle rate (stamp value rate) was Rs.390,02,20,000/-. To determine the fair market value of the said property, reference was also made to District

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Valuation Officer (DVO). As per the DVO report, fair market value of the property was determined at Rs.418,10,64,600/-. The Petitioner was also asked to explain as to why the improvement cost in excess of what has been reported in the valuation report of DVO should not be disallowed from the cost of acquisition of the above-mentioned property for calculation of capital gains under Section 45 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the Assessment Year 2018-19.

3. It is further stated in the impugned Notices that several discrepancies were found in the share transactions by the Petitioner in the year under consideration and the Petitioner was asked to explain as to why the loss claimed amounting to Rs.114,57,87,500/- be disallowed in this regard, as no actual transfer of money has happened for sale of shares by M/s Avantha Realty Ltd. and the sale did not happen at the NAV as per Rule 11 UA and the transaction was just a colouring method to reduce the long term capital gain on sale of property 40, Amrita Shergil Marg for the evasion of tax.

4. Learned Counsel for the Petitioner submits that the proposal of making addition/disallowance to the taxable income of Petitioner on various issues proposed by Respondent vide impugned Show Cause notices dated 23rd February, 2022 and 14th March, 2022 is without jurisdiction.

5. He submits that the proposal for making addition/ disallowance to the taxable income of Petitioner on various issues proposed by Respondent vide impugned Show Cause Notices dated 23rd February, 2022 and 14th March, 2022 is arbitrary, unreasonable, illegal and is being issued in total disregard to the facts of the case.

6. Upon perusal of the paper book, this Court finds it strange that though the property in question was mortgaged in favour of Yes Bank, yet the

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property in question was sold to a company in which the wife of the person in management of the Yes Bank was a Director. Further, admittedly, the property in question was sold by the Petitioner below the circle rate (stamp value rate) contrary to Section 50C of the Act. Consequently, this Court is of the view that the Assessing Officer has the jurisdiction to examine in detail the transaction in question.

7. In view of the aforesaid, this Court is of the opinion that the present writ petition is bereft of any merit. Accordingly, the writ petition and applications are dismissed. Needless to state that it shall be open to the Petitioner to urge all its contentions and submissions on merit before the Assessing Officer, who shall in turn, consider the same in accordance with law.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 28, 2022
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