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

+ ITA 55/2022

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through Mr. Sanjay Kumar, Advocate.

versus

IMPERIAL HOUSING VENTURES P. LTD.

..... Respondent

Through None.

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Date of Decision: 21st 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 appeal has been filed challenging the order dated 26th August, 2020 passed by ITAT in ITA No. 6448/Del/2015 for the Assessment Year 2011-12.
2. Learned counsel for the Appellant states that ITAT has erred in upholding the decision passed by CIT(A), whereby it has deleted the addition made by the Assessing Officer amounting to Rs.7,17,95,500/- as 'unexplained expenditure' in complete disregard of the system of accounting and the applicable accounting standards.



3. Having perused the paper book, this Court finds that in the questions of law framed by appellant the emphasis is on the factum that the entities from whom the purchases had been shown to have been made by the respondent-assessee were bogus and non-existent, on the ground that such entities were not found existing during the search and post search proceeding.

4. However, both, CIT(A) as well as ITAT, have given concurrent findings of fact that purchases made by the respondent-assessee were genuine and the Assessing Officer had neither doubted the receipt of goods by the appellant nor the payment made for the same through banking channels. The relevant portion of the findings of CIT(A) is reproduced hereinbelow:-

“8....In the situation when the goods allegedly purchased have been admittedly delivered to the purchaser that is the appellant and payment made thereof through banking channels, the non-availability/tracability of the sellers cannot lead to the conclusion that impugned purchases had not been made at all. When the goods in question have been received at site, obviously, there would be a supplier. The onus on the appellant with reference to the purchases debited in P&L a/c is to ensure that the payment in question is made for goods purchased and the same has been established as detailed above. The AO has neither doubted the receipt of goods by the appellant nor the payment made for the same through banking channels. The mere fact that the impugned sellers could not be available at the given addresses is not sufficient basis to disallow the impugned purchases as unexplained u/s 69C. It is also important to appreciate here that the appellant group of cases had been subjected to search operation on 09.09.2010 i.e. the same financial year in which the impugned payments had been made for the said purchases. The search proceedings have not led to discovery of any evidence either in the form of incriminating documents of unaccounted assets to evidence the possibility of



receipt of payments made for purchase in the form of cash. It only means that a casual presumption, especially in the present case' where search has taken place, cannot be made with regard to the impugned purchases being bogus as the goods in question have been received at the site and payments thereof have been made in account payee cheques and no evidence of amount of said purchases being received in cash has been found. In the circumstances, the action of the AO in making the impugned addition u/s 69C could only be termed as on the basis of conjectures and surmises....."

(emphasis supplied)

5. The ITAT in the impugned order has also held as under:-

"....Thus, there is a clear finding that purchases were actually made and the same was not disputed by the Revenue Authorities at any point of time. From the perusal of the assessment order, these purchases were reflected in subsequent Assessment Year i.e. 2012-13, the purchases were shown by the assessee in subsequent year. In fact, during the search no incriminating documents were found. The Assessing Officer proceeded on the basis of mere assumption that purchases were bogus despite knowing the fact that the purchases were reflected in the books of accounts for A.Y. 2012-13. The Assessee established before the Assessing Officer that the purchases were genuine and the Assessing Officer has also accepted the same, therefore, Section 69C will not be applicable in the present case for making such additions. Hence, the CIT(A) correctly deleted the addition. Thus, appeal filed by Revenue for A.Y. 2011-12 is dismissed.

8. As regards Assessment Year 2012-13, since the assessee has shown the purchases and the quantification is based on the evidences/documents placed on record. The CIT(A) was right in deleting the protective assessment as in both the years, the purchases cannot be held unexplained u/s 69C in light of the observations made hereinabove para while giving finding to A.Y. 2011-12 by us. Thus, the Revenue's appeal for A.Y. 2012-13 is dismissed."

(emphasis supplied)



6. In view of the aforesaid concurrent findings of fact, this Court is of the opinion that no question of law arises for consideration in the present appeal and the same is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MARCH 21, 2022
AS

