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

\+ ITA 398/2023

PR. COMMISSIONER OF INCOME TAX-1 ..... Appellant

Through: Mr. Sanjay Kumar & Ms. Easha, Advs.

Versus

M/S ANSAL PROPERTIES AND INFRASTRUCTURE LIMITED ..... Respondent

Through: Mr. Tapas Ram Misra, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **07.05.2024**

1. The Principal Commissioner impugns the order dated 23 February 2022 passed by the Income Tax Appellate Tribunal ["**ITAT**"] and has proposed the following questions of law for our consideration:

> "A. Whether on the facts and under the circumstance of the case and in law, the Ld. ITAT is justified in upholding the order of Ld. CIT(A) deleting the addition of Rs.28,61,269/- made on account of ALV of the properties claimed to have been used for own business purposes by the assessee, without considering the fact that such properties were shown as stock-in-trade by the assessee and hence were required to be considered for assessing ALV?
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> B. Whether on the facts and under the circumstance of the case and in law, the Ld. ITAT is justified in upholding the order of Ld. CIT(A) deleting the addition of Rs.45,56,555/- made on account of 5% increase in ALV of the properties, without

considering the fact that ALV cannot remain the same in subsequent years because cost of inflation has to be accounted for?

C. Whether on the facts and under the circumstance of the case and in law, the Ld. ITAT is justified in upholding the order of Ld. CIT(A) directing the AO to exclude the property given on rent from ALV on the basis of assessment order of A.Y. 2011-12 and 2012-13, without verifying the factual position as to whether such properties were given on rent during the year under consideration and rental income was also shown?

D. Whether on the facts and under the circumstance of the case and in law, the Ld. ITAT is justified in upholding the order of Ld. CIT(A) deleting the addition of Rs.6,46,77,024/- made on account disallowance under Section 14A of the Act read with Rule 8D, without considering the fact that assessee could not establish the nexus between own funds and investment made in securities resulting into exempt income particularly when huge interest was paid on borrowed funds?"

2. Insofar as the issue of unutilized inventory in the shape of flats being used by the assessee for its own business purposes, the ITAT has found the same would not even fall within the ambit of Section 22 of the Income Tax Act, 1961 ["**Act**"]. The aforesaid position in law could not be disputed before us.

3. The ITAT has also upheld the view expressed by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] insofar as the increase in the notional Annual Letting Value ["**ALV**"] by 5% was concerned bearing in mind the undisputed position which appears and emerges from the record and of the same not being based on any comparable or for that matter any other cogent or material evidence.

4. That only leaves us to deal with the issues pertaining to Section 14A of the Act read alongside Rule 8D of the Income Tax Rules, 1962 ["**Rules**"]. The ITAT has come to record a categorical finding that the assessee had sufficient funds of its own and thus the view as taken by the Assessing Officer was clearly unjustified.

5. On an overall conspectus of the aforesaid, we find that the appeal fails to raise any substantial question of law. It shall, consequently, stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 7, 2024/kk