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

\+ ITA 556/2023

PR COMMISSIONER OF INCOME TAX, DELHI -1 ….Appellant

Through: Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon & Mr. Rahul Singh, JSCs.

versus

M/S. ADVANCE INDIA PROJECTS PVT LTD .... Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Madhur Aggarwal & Mr. Mahir Aggarwal, Advs.

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

O R D E R

% **10.05.2024**

CM APPL. 49973/2023 (Delay of 217 days in re-filing)

1. Bearing in mind the disclosures made, the delay of 217 days in re-filing the appeal is condoned.

2. Application stands disposed of.

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3. The Principal Commissioner impugns the order dated 26 May 2022 passed by the Income Tax Appellate Tribunal ["**ITAT**"] and posits the following questions of law for our consideration:

> "A. Whether in the facts and under the circumstances of the case, the Hon'ble ITAT is justified in law in upholding the order of CIT(A) to delete the addition of Rs. 8,56,25,768/- on account of Undisclosed FAR without appreciating the fact that without having confirmation from M/s. Rapid Infracon Pvt. Ltd. it cannot be ascertained that payment of Rs. 8,56,25,768/- made by the assessee company was for reimbursement of EDC/IDC Charges?

B. Whether on the facts and under the circumstances of the case, the Hon'ble ITAT was justified in law in upholding the order of CIT(A) to delete the addition of Rs. 8,56,25,768/- on account of Undisclosed FAR without appreciating the fact of the case that as per the agreement between M/s. Rapid Infracon Pvt. Ltd. and M/s. Advance India Projects Ltd., total EDC, IDC and labour cess payable by Rapid and AIPL was in the ratio of 2.13 : 2.60 and so even if the EDC/IDC Charges were reimbursable, it must be limited to Rs. 4,70,67,018/- (i.e. 2,60/4.73 of Rs. 8,56,25,768/- or 54.96828% of Rs. 8,56,25,768/-)?

C. Whether on the facts and under the circumstances of the case, the Hon'ble ITAT was justified in law in deleting the adhoc disallowance of Rs. 9,02,822/- without appreciating the fact that the assessee has not maintained proper log book for the cars and the Assessing Officer and Ld. CIT(A), both have mentioned that use of car for personal uses of Director cannot be ruled out?"

4. We take note of following conclusive findings of fact which have come to be rendered by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] and which were also affirmed by the ITAT. The aforesaid findings of fact as rendered by the CIT(A) are set out hereinbelow:

"As mentioned in the agreement, Rs. 60.00 Crores was paid by PBPL during the period from 13/02/2013 to 19/03/2013. Therefore, an amount of Rs. 5.00 Crore was payable by PBPL to the appellant at the end of 31/03/2013 as against transfer of Development rights. <u>Further, the amount of Rs. 8,56,25,768/- was also payable by PBPL to the appellant as against proportionate external development charges, internal development charges and labour cess.</u> The appellant has shown total amount of Rs. 65.00 Crore in its P&L account under the head 'Sale of Inventory' which is part of 'Revenue from Operations' in the P & L account. <u>It is also noticed that the appellant purchased Development right from Rapid Infracon Pvt. Ltd. for a total consideration of Rs. 56,40,25,768/- which comprised a sum of Rs. 47,84,00,000/- towards acquisition of Development Rights and Rs. 8,56,25,768/- towards reimbursement of external development charges/internal development charges/labour cess. It is gathered that EDC and IDC charges are those chares which the Government takes from the builders for development of the infrastructure and EDC and IDC rates are fixed by the Government /area authorities. It is submitted that, the owner of the land was Hamid Real Estate Pvt. Ltd. And EDC/IDC were deposited by Hamid Real Estate Pvt. Ltd. for the total project and including for the proportionate share of area sold by the appellant. Hamid Real Estate Pvt. Ltd. And</u>

Rapid Infracon Pvt. Ld. Had entered into Development rights agreement dated 18/10/2012 to grant/ transfer, convey and assign the Development rights. Subsequently, the appellant and Rapid Infracon Pvt. Ltd. entered into an agreement dated 29/03/2023 through which the appellant acquired the exclusive Development rights for development of FAR admeasuring 2,60,000 sq. ft. on land admeasuring 3.4 acres from Rapid Infracon Pvt. Ltd. The said Development Rights were transferred by the appellant to the PBPL. It has been submitted by the appellant that since the said sum of Rs.8,56,25,768/- was towards reimbursement of EDC/IDC /Labour cess, it was not included in the sale of inventory. The said amount of Rs.8,56,25,768/- was paid to Rapid Infracon Pvt. Ltd. during F.Y. 2013-14. On perusal of the details, it is seen that the appellant had shown Rs.65.00 Crores as consideration received against transfer of Development rights in P&L account against which cost of such Development rights has been claimed at Rs. 47,84,00,000/-. As regards EDC/IDC and labour cess of Rs. 8,56,25,768/-, the appellant has shown the same as reimbursable expenses and the said amount has not been routed through P&L account either for purchase or for sale. The said amount of Rs. 8,56,25,768/- has not been claimed as cost against the sale of Development rights in P&L account. Considering the above facts, I find the accounting entry maintained by the appellant in order and there is no element of undisclosed sale receipts in respect of Development rights. Accordingly, the addition of Rs. 8,56,25,768/- is deleted and the above ground of appeal is allowed.

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"**13.3** The assessment order and the written submission of the appellant have duly been considered. It is observed by the AO that the appellant did not furnished the name of the person using the car and log book of each car maintained by the company during the relevant assessment year. It is also observed by the AO that the appellant owned a high value car and the chances of use of that car by the staff is very less. The AO has come to the conclusion that element of personal use by the Director of the company cannot be ruled out and he proceeded to disallow 1/5 of the expenses relating to car maintenance, car loan interest and depreciation on car. The appellant has submitted that the books of account are duly audited and in the tax audit report, the auditor has not pointed out any element of personal use. It has also been submitted that no discrepancy whatsoever has been pointed out by the AO in respect of the expenses claimed by the appellant. The judicial pronouncement relied upon by the appellant have also been considered. It is noted that the appellant has not maintained the log book for cars and did not produce the same before the AO.

Further, the element of personal use of the cars by the Directors cannot be ruled out. However, considering the facts of the case, disallowance is restricted to Rs.9,02,822/- being 1/10th of the expenses pertaining to car running maintenance, car loan interest and depreciation on car. Accordingly, the above ground of appeal is partly allowed."

5. In view of the aforesaid and since no substantial question of law can be discerned to arise, we dismiss the instant appeal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 10, 2024/kk