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

\+ ITA 94/2021

PR. COMMISSIONER OF INCOME TAX- 5 ..... Appellant

Through: Mr. Siddharth Sinha, Sr.SC with Ms. Dacchita Shahi and Ms. Anuja Pethia, Jr.SCs.

versus

M/ S LAND BASE INDIA LTD. ..... Respondent

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal and Mr. Abhisek Singhvi, Advs.

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

O R D E R

% **16.05.2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 26 August 2019 and has proposed the following questions of law for our consideration:

> "a) Whether on facts and circumstances of the case, the Income Tax Appellate Tribunal ["**ITAT**"] was justified in deleting the addition of Rs. 19,59,50/000/- on account of undisclosed income on sale of land?
>
> b) Whether on facts and circumstances of the case, the ITAT was justified in deleting the addition of Rs. 51,08,772/- on account of disallowance of depreciation on golf course?
>
> c) Whether the order passed by the ITAT is perverse in law and on facts?"

2. We note that insofar as the undervaluation of land is concerned,

the ITAT has rendered the following findings:

> "52. We have carefully considered the rival contention and perused the orders of the lower authorities. During the year under consideration, the assessee had, vide sale deed dated 26th May, 2004, transferred a plot of land admeasuring 31 canals 2 Marias (about 3.89 acres), situated at Village Sukhrali, Tehsil & Dist. Gurgaon to Mjs. Green Max Estates Pvt. Ltd., for total consideration of Rs. 4 crores . The cost of the said land was reflected at Rs. 1,90,71,127 in the books of accounts, resulting in taxable 'business income' of Rs. 2,09,28,872, which was shown as income in the profit and loss account. In the impugned assessment, the assessing officer, on the basis of certain other transactions of sale of land/ flat, substituted actual consideration of Rs. 4 crores by notional/ hypothetical amount of Rs. 23,59,50,000 and made addition of the difference amounting to Rs. 19,59,50,000 as alleged undisclosed income.
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>> "6.1 The findings of the A.O. in the assessment order as well as in the remand report & the written and oral submission(s) made on behalf of the appellant have been carefully considered. It has been the case of A.O. that the consideration shown by the appellant was not the real consideration, but this has been done without bringing on record any evidence- direct or inferential- in support of the same. It is a trite law that the onus to prove otherwise than the fact, lies on the person who alleges. It has been consistently held by the courts of laws that it is for the Revenue to establish that there has been an understatement of consideration by the assessee & the consideration actually received is more than the one disclosed before the tax authorities. In case the A.O. wants to make out a case that the assessee had received more consideration then he should have basic material and evidence in his hands, which suggest that the consideration exceeded the amount shown in the document. Reliance is placed on the decisions of the Supreme Court in CIT v. George Henderson Co Ltd (1967) 66 ITR 622(SC), CIT v. Gillanders Arbuthnot & Co (1973) 87 ITR 407(SC), K.P. Varghese v. ITO (1981) 131 ITR 597 (SC) CIT V. Shivakami Co. (P) Ltd. (1986) 159 ITR 71 (SC) and CIT V. Godawari Corpn. Ltd. (1993) 200 ITR 567 (SC), wherein it has been held that unless there is evidence that more than what was stated was recorded no higher price or value can be taken to be the basis for computation of capital gains. Reliance is also placed on the decisions of the jurisdictional High Court of Delhi in CIT V. Gulshan Kumar (Deed.) (2002) 257 ITR 703 (Del.) & CIT V. Naresh Khattar HUF (2003) 261 ITR 664 (Delhi), CIT V. Sm. Sushila Devi (2002) 256 ITR 179

> (Delhi) and CIT v. Sm. Nilofer I. Singh (2009) 221 CTR 277/ (2009)176 Taxman 252/ (2008)14 DTR 108. These decisions make it more than clear that the expression 'the full value of consideration' as contemplated in section 48 of the Act does not have any reference to the market value but only to the consideration referred to in the sale deeds or other supporting evidences as the sale price of the assets which have been transferred.
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> 6.2 In the instant case, no material has been confronted by the department, so as to suggest that the assessee paid consideration of Rs. 23,59,50,000/- i.e. Rs. 7.26 crores per acre multiplied by 3.25 acres in place of Rs. 4,00,00,000/- . In the instant case, all that the A.O. has done is to rely upon the hypothetical sale price, which does not show or prove that there is some underhand dealing & consideration has passed more than what is disclosed by the assessee. The sale consideration disclosed by the assessee, supported by documentary evidence cannot be .disbelieved merely on the basis of a hypothetical sale price adopted by the Assessing Officer. In view of the aforesaid discussion, I am of the considered view that the A.O. has failed to adduce evidence on record in support of understatement of the sale consideration by the assessee. Therefore, A.O. is directed to adopt me sale consideration of the impugned plot of residential land at the figure as disclosed by the assessee. As a result, ground no.3 is allowed."

3. It is the undisputed position before us that the Assessing Officer, even if doubting the valuation of the land, had made no reference to the District Valuation Officer [“D**VO”]**. It is the aforesaid which perhaps led to the ITAT to observe that the findings as returned were based on mere conjectures.

4. Insofar as the question of the depreciation is concerned, the Tribunal has observed as follows:

> “13. In the present case also before us, the golf course owned and used by the assessee for the purpose of the business as a tool of the business of the assessee. It is functioning like a plant in case of the assessee. Further, it is not the case of the revenue that assessee has claimed any depreciation on the land. It is similar to the depreciation on pond allowed in the case of an aquaculture company by the honourable Supreme Court in 379 ITR 335 and honourable Gujarat High Court holding that mineral oil well also

constitute a plant. The learned CIT - A is not correct in saying that playing equipments, creating landscaping, holes, ponds and others are being done in the regular course to facilitate the game of golf and not into any production of goods and services. In fact, by creating these facilities, the assessee has created a service facility for its members and it produces revenue for the assessee. It is not always necessary that each plant should produce certain other tangible goods. Further, in case of the assessee in certain assessment years under section 143 (3) of the income tax act the claim of the depreciation holding the golf course as plant has been accepted by revenue and in subsequent years in assessment year 2006 - 07 to 2009 - 10 also the claim of the assessee is accepted. In fact the claim of depreciation on golf course as a plant stands accepted in assessment year 98 - 99 to assessment year 2000 - 01, 2002 - 03 and 2006 - 07 to 2009 - 10. Even otherwise, coordinate bench in case of Deputy Commissioner of Income Tax vs. JP greens Ltd in ITA number 3545-3547 /Del/2009 , on identical facts and circumstances considered golf course as plant and depreciation at the rate of 25% was allowed holding that assessing officer himself has allowed depreciation at that rate in past in that particular case. The decision relied upon by the learned CIT DR that Toll Road does not qualify as a plant for higher rate of depreciation as held by the honourable Delhi High Court in 52 taxmann.com 21 (Delhi) in the Moradabad Toll Road Co Ltd vs. Asst Commissioner of income tax was decided as 'road' was specifically considered as part of building in the part A of appendix 1 of The Income tax Rules 1962. Thus, the fat of that case is distinguishable. Further, it was not stated before us that revenue has not accepted the decision of the coordinate bench in DCIT vs. JP greens Ltd where golf course was held to be plant. Therefore, it stands concluded that golf course is a plant looking to the nature of business of the assessee. Further, the judicial precedents relied upon by the parties also only lays down the proposition established by the higher judicial forum supports the above view. In view of this, ground number 1 of the appeal of the assessee is allowed reversing the views of the lower authorities, holding that golf course is a plant on which assessee is entitled to the depreciation at the rate of 25% under the income tax act."

5. However, we further take note of the fact that the treatment of the golf course as a plant for the purposes of depreciation was consistently accepted by the appellants right from Assessment Year ["**AY**"] 1998-99 up to AY 2000-01 as well as thereafter in AYs 2002-03 and AYs 2006-07 to 2009-10**.**

6. In view of the aforesaid, we find no ground to entertain the instant appeal. No substantial question of law arises. The appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 16, 2024/P