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

\+ ITA 190/2024

PRINCIPAL COMMISSIONER OF
INCOM TAX-1 ..... Appellant

Through: Mr. Prashant Meharchandani, SSC with Mr. Akshat Singh, JSC, Ms. Ritika Vohara & Mr. Utkarsh Kandpal, Advs.

versus

ECONOMICAL CREDIT AND CONSTRUCTION
CO. PVT. LTD. ..... Respondent

Through: None

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

O R D E R

% 19.03.2024

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal [“**ITAT**”] dated 11 October 2023 and has proposed the following questions of law for our consideration:

> “A. Whether on the facts and circumstances of the case and in law, the impugned order passed by the Learned ITAT is perverse in setting aside the treatment of Rs. 1,06,70,000/- by the AO as income from undisclosed sources by clearly ignoring the concurrent findings of fact by the Learned AO as well as by the Learned CIT(A) on absence of any supporting evidence provided by the Assessee as to its claims?
>
> B. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the addition made by the AO ignoring the facts that the assessee could not provide the documentary evidences for the revenue receipt during the year under consideration?
>
> C. Whether on the facts and circumstances of the case and in law, the direction of the Learned ITAT in the impugned order to the

AO to tax the income/profit accrued to the assessee from sale of land/property in AY 2007-08 is capable of being complied with?"

2. As we note from the following recitals which appear in paragraphs 9 to 11 of the order framed by the ITAT, undisputedly the sale transaction occurred in Financial Year ["**FY**"] 2006-07 pertaining to Assessment Year ["**AY**"] 2007-08.

> "**9.** First of all we may point out that it is trite law that entries in the books of accounts are not determinative of true nature of transaction and nature of income as per preposition rendered by Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. vs CIT 82 ITR 363 (SC). It is also a well established and accepted principal of tax jurisprudence that the right income should be taxed in the right hands, under right head of income in the right year of assessment. Undisputedly, in the present case the transaction of sale of property was undertaken by the assessee during FY 2006-07 pertaining to AY 2007-08 but the assessee did not recorded the entry in the books of accounts and continuously shown the property in the balance sheet till AY 2012-13. Hence, the books of accounts of assessment were not revealing correct position of properties owned by assessee till 2012-13.
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> **10.** As we have noted above that as per assessee during assessment proceedings of AY 2012-13 the Assessing Officer issued notice u/s. 133(6) of the Act to the purchaser M/s. Jai Kishan Liquor Pvt. Ltd. and in response to said notice the purchaser company submitted that "the company has not purchase any property from the above party (the assessee) during the financial year 2011-12". Copy of sale deed available at pages 108 to 155 shows that the assessee company sold the land on 21.03.2007 which falls within the ambit of AY 2007-08 and as per recital in the sale deed the assessee had received sale consideration also at the time of execution and registration of sale deed on 21.03.2007.
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> **11**. Be that as it may, we note that despite the fact that during AY 2012-13 no transaction of sale of property/land was undertaken by the assessee but the assessee recorded book entries pertaining to the sale of property/land transaction, which was in fact, undertaken during AY 2007-08, in the books and financial statements for AY 2012-13 by passing books entries only. Therefore, respectfully following the principal of tax jurisprudence that the right income should be taxed in the right hands, under right head of income in the right year of assessment, we direct the Assessing Officer to tax the income/profit accrued

to the assessee from sale of land/property in AY 2007-08. Grounds of assessee are partly allowed."

3. It is in the aforesaid backdrop that the ITAT has come to hold that no addition under Section 68 of the Income Tax Act, 1961 ["**Act**"] could have been made in AY 2012-13.

4. The view so taken by the ITAT is clearly unexceptionable. We find no merit in the appeal. The appeal raises no substantial question of law and consequently it shall stand dismissed.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MARCH 19, 2024/kk