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

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Date of Decision : 25.10.2024+ **ITA 523/2019**

PR. COMMISSIONER OF INCOME TAX – 7Appellant

Through: Mr. Debesh Panda, Sr. Standing Counsel with Mr. Vikramaditya Singh and Ms. Zehra Khan, Jr. Standing Counsels and Mr. Kanishk Aggarwal and Ms. Anaunttta Shankar, Advocates

versus

M/S PARAMOUNT RESIDENCY LTD.Respondent

Through: Mr. Rakesh Gupta, Mr. Somil Agarwal and Mr. Dushyant Agrawal, Advocates

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 13.08.2018 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No. 4907/Del/2014 captioned *M/s Paramount Residency Pvt. Ltd. v. Deputy CIT* and ITA No. 6102/Del/2014 captioned *Deputy CIT v. M/s Paramount Residency Pvt.*



Ltd.

2. The said cross appeals were filed by the Assessee and the Revenue respectively assailing an order dated 08.08.2014 passed by the Commissioner of Income Tax (Appeals), Delhi [hereafter *the CIT(A)*] in respect of the assessment year (AY) 2010-11. The learned ITAT had found the case in favour of the assessee and held that purchases of the amount of ₹7,86,21,320/-, which were alleged to be bogus purchases and were disallowed as expenditure, are liable to be allowed considering the documents and material produced by the Assessee.

3. The controversy essentially relates to disallowance of purchases by the assessee aggregating ₹7,86,21,320/- from the following four entities:

S. No.	Name of the parties	Amount of purchase
1	Mohan Ram Trading Co.	₹1,25,40,049/-
2	Shyamji Traders	₹25,79,978/-
3	Ganga Trading Co.	₹85,01,193/-
4	U-Tek Sales Corporation	₹5,50,00,000/-
	Total	₹7,86,21,320/-

4. In the aforesaid context, the Revenue had projected the following questions of law for consideration of this Court:

“A. Whether the Ld. ITAT erred in deleting the addition of Rs. 7,86,21,320/- made by the Assessing Officer on account of disallowance of bogus purchases particularly when the assessee failed to prove identity of the suppliers and genuineness of such purchases claimed during the course of assessment proceedings by not producing these parties before the Assessing Officer?



B. Whether the Ld. ITAT erred in deleting the addition of Rs. 7,86,21,320/- made by the Assessing Officer on account of disallowance of bogus purchases without appreciating the fact that in all the cases of four parties: Mohan Ram Trading Co.; Shyamji Traders; Ganga Trading Co.; U-Tek Sales Corporation, the cash was immediately withdrawn from the bank account?

C. Whether the Id. ITAT erred in deleting the addition of Rs. 7,86,21,320/- made by the Assessing Officer on account of disallowance of bogus purchases despite the fact that upon field enquiries the suppliers could not be located and the assessee failed to produce the parties despite several opportunities?"

5. However, at the hearing held on 20.05.2024, the learned counsel for the Revenue had handed over the questions of law as reframed and on the said basis, this Court noted the following questions for consideration in the present appeal:

“A. Whether the impugned judgment is unsustainable in law by being directly contrary to Section 69C of the Act and which is not even referred to by the ITAT, before interfering in the addition made in the present case?

B. Whether the interference by the forums below in respect of the addition made by the AO is wholly perverse and on grounds that are extraneous to settled principles of law?

C. Whether the forums below while interfering in the additions made by the AO and having completely failed to take note of Section 69C of the Act have defeated and rendered nugatory the deeming fiction of law employed by Parliament therein?

D. Whether the forums below while interfering against the addition made by the AO have failed to appreciate that the approach taken by them of carrying out a valuation is squarely in the teeth of the judgment of this Court in **CIT v. Aar Pee Apartments P. Ltd.**, [2009 SCC OnLine Del 4224]?"



6. On a bare perusal of the assessment order dated 28.03.2013, it is apparent that no additions were made by the Assessing Officer (hereafter *the AO*) under Section 69C of the Act. Further, neither the assessment order nor the appellate order passed by the learned CIT(A) proceeds on the basis of the additions made by the AO under Section 69C of the Act. The impugned order is also not premised on the basis that any addition was made to the assessee's income under Section 69C of the Act.

7. Concededly, the questions as suggested by the Revenue and as noted by this court in the order dated 20.05.2024 do not arise in the present case. The only question that falls for consideration is – whether the learned ITAT had erred in deleting the addition of ₹7,86,21,320/- made by the AO on account of its findings that certain purchases which were booked by the assessee in his books of accounts, were bogus purchases.

8. The said question arises in the following context. Search and seizure operations under Section 132 of the Act were conducted on 11.03.2011 in ***M/s Paramount, Gulshan and Ajnara Group*** cases. The assessee company, which is a part of the Paramount Group, is engaged in construction of residential and commercial projects in the State of Uttar Pradesh.

9. Notice under Section 153A of the Act was issued to the assessee on 09.10.2012. Pursuant to the same, the assessee filed its income tax returns for the AY 2010-11.

10. During the course of assessment proceedings, the learned AO found that the assessee had booked purchases of material from four entities (M/s Mohan Ram Trading Co.; M/s Shyamji Traders; Ganga Trading Co. & U-Tek Sales Corporation). As noted above, inquiries were made and the said parties were found to be non-existent. The summons issued to the said



parties under Section 131 of the Act were also returned back unserved.

11. On the aforesaid basis, the AO had concluded that the purchases booked in the books of accounts were not genuine, and disallowed the same.

12. To counter the aforesaid allegations, the assessee produced several documents including its books of accounts, inwards register, the goods receipt notes (hereafter *the GR notes*) as well as written statements, which duly reflected that the assessee had received the material against the said purchase. The assessee also explained that the business was conducted in an unorganized sector and the suppliers of construction material are mainly illiterate persons operating in grey markets. The assessee also produced its bank accounts reflecting payments made to the said entities through banking channels.

13. However, the AO did not accept the material and evidence produced by the assessee and accordingly, disallowed the expenditure to the extent of ₹7,86,21,320/- and consequently added an equal amount to the income returned by the assessee.

14. The assessee appealed the said decision before the learned CIT(A). The assessee reiterated its claim that it had incurred the expenditure as reflected in its books of accounts. The said payment was made by cheques; the material received was duly recorded in the stock registers; the receipt of supplies was evidenced by receipts issued by transporter (GRs); the books of accounts were audited; and the suppliers were registered under the Sales Tax Act and had a valid TIN. In addition, the assessee also furnished the copy of the PAN cards of the suppliers in question.

15. The learned CIT(A) embarked on the exercise of valuing the project to determine, the quantum of expenditure that could be reasonably expected



incurred by the assessee. So far as the four entities are concerned, the learned CIT(A) raised doubts as to their existence as the amounts paid by the assessee was withdrawn by those entities. However, on the basis of the valuation of the project, the learned CIT(A) concluded that expenditure as claimed had, in fact, been incurred by the assessee. Notwithstanding the aforesaid conclusion the learned CIT(A) did not delete the entire addition. The learned CIT(A) surmised that part of the expenditure must have been incurred in cash and accordingly, disallowed 20% of the expenditure in question.

16. Accordingly, the learned CIT(A) passed an order dated 08.08.2024 reducing the addition made by the AO from ₹7,86,21,320/- to ₹1,96,55,330/-

17. The said order passed by the learned CIT(A) was appealed by the Revenue as well as the assessee (ITA No. 4907/Del/2014 and ITA No. 6102/Del/2014) which was culminated into the impugned order.

18. The learned ITAT found that the disallowance of expenditure is not sustainable and found that the evidence and material produced by the assessee establish that it had incurred the expenditure as claimed. The learned ITAT found that there is no dispute that, in fact, the assessee had made payments through banking channels to its suppliers and there was no evidence or suggestion that cash had been repaid by the said suppliers to the assessee.

19. It is also apposite to note that there is no material on record to indicate that there is any serious doubt as to the physical material shown to be purchased from the four entities in question, was used by the assessee in its activities. The stock registers produced by the assessee were not rejected by



the AO. It is also apparent that the assessee had established that it made payments through banking channels against the supply of materials, which were duly reflected in its stock registers.

20. As noted by the learned ITAT, there is no evidence to suggest that the amounts paid by the assessee for the supplies booked in its books of accounts had been returned to the assessee in a form of cash or through any accommodation entry.

21. It is clear from the above that the controversy involved is fact-centric and revolves on the question whether, in fact, the purchases booked in the books of accounts were wholly and exclusively for the purpose of business as claimed by the assessee. The findings of the learned ITAT in this regard cannot be held to be perverse.

22. In view of the above, no substantial questions of law arise for consideration of this Court in this appeal.

23. The present appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 25, 2024

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Click here to check corrigendum, if any