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

+ **ITA 654/2019**

B.S.INFO SOLUTION PVT.LTD. Appellant

Through: Dr.Rakesh Gupta, Mr.Somil
Agarwal, Mr.Dushyant
Agrawal and Mr.Prateek Bhati,
Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr. Abhishek Maratha, Sr.SC
with Mr. Parth Semwal and
Ms. Nupur Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER
05.03.2024

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1. The assessee impugns the judgment rendered by the Income Tax Appellate Tribunal [“ITAT”] dated 23 August 2018 for Assessment Year [“AY”] 2012-13 and has framed the following questions of law for our consideration:-

(a) Whether ITAT erred in law in passing the order which is perverse?

(b) Whether ITAT erred in law in holding the loss on sale of shares as arranged loss on the basis of surmises and conjectures?

(c) Whether ITAT erred in law in ignoring the



evidences and factual findings recorded by Commissioner of Income Tax (Appeals) ["CIT(A)"] without any basis, material or evidence?

2. We, however, upon going through the material on record as well as the orders passed by the Assessing Officer ["AO"] find that the issues that are sought to be canvassed before us are concluded by findings of fact. We note that the AO while examining the transactions in question had recorded the following findings:-

“(ii) Nevertheless, vide order sheet entry dated 14.01.2015 the assessee was granted another opportunity to file all the relevant documents to prove its intent of collaborating with M/s. CRPL for development of the said property. However, the assessee could not produce a single shred of documentary evidence in support of efforts undertaken by the M/s CRPL for development of that land during the period of so called collaboration.

(iii) The so called "Collaboration Agreement" between assessee company and CRPL was executed on 28.02.2011, while the assessee had already received an advance of Rs.4 Crores from M/s Q.A. Infotech Pvt. Ltd. on account of sale of the same property vide cheques of 2 Crore each dated 31.12.2010 & 31.03.2010. In this connection, the statement of Shri Mukesh Sharma, Director of M/s Q.A. Infotech Pvt. Ltd was recorded on oath on 17.02.2015 in which Sh. Mukesh Sharma confirmed that his company, M/s §;Av. Infotech Pvt Ltd had agreed to buy the property at Plot no-8.A-68,NO IDA from the assessee company for which an amount of Rs. 9.60 Crores was paid without any formal agreement and that the formal agreement to sell was executed only after the payment of last installment of Rs. 2 Crores to the assessee company. He also stated that his company had no business relationship with assessee company. It is practically impossible that a company which did not have any business connection with assessee would transfer such huge amount of funds to assessee without any purpose. Therefore, there is absolutely no ambiguity that assessee company had entered into an agreement to sell the said property to M/s Q.A Infotech Limited way back in FY 2009-10 had already received an advance of Rs.4 Cr from M/s Q.A Infotech Limited on that account vide tow cheques of 2 Crore each dated 31.12.20 I 0 & 31.03.2010 when the so called 'Collaboration Agreement' was said to have been executed between assessee and M/s Charmwood Realtech Pvt Ltd. If the assessee had genuinely intended to develop the saldjproperty. then the advance of Rs.4 Crore received from M/s Q.A Infotech Limited



should have been returned back to that party, which was not done even though the assessee company had received Rs. 9 Crores from M/s Charmwood Realtech Pvt. Ltd in the month of March, 2011.

(iv) Further, taking the course of investigations forward, statement of Shri Naresh Kumar Bansal, the director of Charmwood Realtech Pvt Ltd (CRPL) was recorded on oath during which he was categorically asked to produce the original minutes book of M/s Charmwood Realtech Pvt Ltd for F.Y. 2010-11 & 2011-12 along with original "Collaboration Agreement". However, Shri Bansal admitted on oath that no Share holder's minutes book were prepared for that period and admitted that original agreement was returned back to the assessee company. This further proved that the so called "Collaboration Agreement" and its subsequent cancellation were mere arrangements; the decision making procedure for corporate entities as per Companies Act were not followed.

(v) Since assessee company had purchased shares of "M/s Vekateshwara Buildtech Pvt. Ltd." at a huge premium during AY-2011-12, the assessee was asked to submit justification for the said investment. In response to the queries raised, the; assessee submitted that the same was done as per mutual discussions, consultations and understanding between assessee company and M/s Vekateshwara Buildtech Pvt. Ltd. after taking into account future prospects of that company. In this connection the Audit Report of the company M/s Vekateshwara Buildtech Pvt. Ltd for A Y 2011-12 and A Y-2012-13 were analyzed, which clearly revealed that the company was not engaged in any worthwhile business activity during that period, as evident from the chart below:

Name of Company	AY	Gross total income as per ITR	Gross receipts as per P&L a/c	Source of Income
M/s Vekateshwara Buildtech Pvt. Ltd.	2011-12	Rs.8360/-	Rs.2.82,400/-	Commission receipt and interest-income
M/s Vekateshwara Buildtech Pvt. Ltd.	2012-13	Rs.7,98,401	Rs.29.53 Lakhs	Commission receipt and other income

The company did not own any worthwhile fixed asset during the A Y-2011- 12 and AY-2012-13. It was also found to be significantly noteworthy that the year in which assessee subscribed to the shares of M/s Vekateshwara Buildtech Pvt. Ltd was. in fact, the very first year of operation of that company. Thus, all these findings clearly proved that M/s Vekateshwara Buildtech Pvt. Ltd was neither into real estate business or was it engaged in any such business activity which could have justified such huge investment of Rs.7.5 Crore by the assessee company at high premium in the AY-2011-12. This company was also incorporated on 03.01.2011.



(vi) In this connection, the net worth of the company M/s Venkateshwara Buildtech Pvt. Ltd for the relevant period was also analyzed, which It is tabulated as under:

Year ending	No. of shares	Net worth per share
30.03.2011	9,85,000/-	Rs.82.19
31.03.2012	9,85,000/-	Rs.82.19

Therefore, it was seen that assessee had invested in 3,75,000 shares of, M/s Venkateshwara Buildtech Pvt. Ltd @ Rs.200 per share in FY-2010H1 when the actual Book value of those shares was merely Rs.82.19/- per share. In this connection, the Statement: of Shri Sunil Gandhi, Director of the assessee company was also recorded on oath on 22.12.2014 wherein Shri Sunil Gandhi admitted that the rate of purchase of these shares was not as per their book value. Shri Sunil Gandhi also admitted on oath that control and Management of the assessee company, as well as, M/s Venkateshwara Buildtech Pvt. was in his hands since he was the Director of both these companies. Therefore, it is clearly evident that M/s Venkateshwara Buildtech Pvt. Ltd is a family group concern in which both Sh.Sunil Gandhi and his on Shri Shivangal Gandhi are directors and share holders, and hence the decision taken to buy the shares of M/s Venkateshwara Buildtech Pvt. Ltd. at higher rate than the book value in the FY-2010-11 was closely controlled by Shri Sunil Gandhi. The assessee could not offer any explanation to the question as to why it had made such huge investment of Rs. 7.5 Crore out of funds borrowed from M/s CRPL in the shares of a company which was not engaged In any core business activity, that too at such a high premium of Rs.190 per share when the book value of these shares was merely Rs.82 per share. The assessee company after purchasing the shares of M/s Venkateshwara Buildtech Pvt. Ltd. at the rate of Rs.200 per share, sold these shares in the very next year to M/s CRPL at the rate of Rs.82 per share in lieu of repayment of the advance received in the previous year. Further investigations have revealed that both the companies M/s, CRPL and M/s VBPL have declared same address in their ITR and have also been functioning from the same premises i.e. 93, Pocket-2, Jasola, New Delhi -110 025. It is also seen that M/s Charmwood Reattech Pvt. Ltd and M/s Venkateshwara Buildtech Pvt. Ltd. was incorporated on the same day i.e. 03.01.2011 and their PANs were generated also on 08.02.2011 for the both companies. All these factors indicate that control and management of these three companies are with common set of people.

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"C. Conclusions sought to be drawn:



It is abundantly clear from the above discussion that the assessee had decided to sell the property to M/s Q.A. Infotech Pvt. Ltd. (QIPL) in FY-2010-11 itself when it had received a substantial advance of Rs.4 Crore from that party vide two cheques of 2 Crore each dated 31.12.2010 and 30.03.2010. Therefore, the assessee was well aware of the 'Long Term Capital Gain' accruing to him on account of the sale of property, and, resultant tax liability on such Capital Gain. Accordingly, a sequence of financial transactions between assessee and 2 other related group entities, namely M/s Charmwood Realtech Private Limited and M/s Venkateshwara Buildtech Private Limited were ingeniously planned with the pre-designated objective of evading the tax liability accruing to the assessee on account of Long Term Capital Gain j.cin; sale of property to M/s QIPL. Investigations have revealed that all the three companies are closely correlated and the control and management of all the three companies is common. Hence, the so called "Collaboration Agreement" between assessee and M/s Charmwood Realtech Private Limited and its subsequent cancellation was nothing but a collusive arrangement between these parties to confer semblance of genuineness to the pre planned transfer of funds between those two companies. Otherwise, in a genuine transaction the assessee would not have entered into an agreement for such a huge real estate project as development of iT Park with a company like M/s Charmwood Realtech Private Limited which did not even have any business activity. It is also an ambiguity incident to note that even after entering into such agreement' with M/s, Charmwood Realtech Pvt. Ltd., the assessee company chose to receive further a sum of Rs.3.60 Crores from the buyer i.e. M/s. QIPL on 15.04.2011. This is also a vital instance to state the fact that the true intention of the assessee company was to sell the property to M/s. QIPL. Therefore it is in this background that the assessee purchased shares of a novice group company namely. M/s Venkateshwara Buildtech Private Limited at a high premium on determining whether a transaction is a sham or illusory transaction or a devise, or ruse the assessing Officer IS entitled to penetrate the veil covering it and ascertain the truth."

3. The CIT(A) however, while examining the issue of interconnected parties, observed as follow:-

"v. It is also noted that Charmwood Realtech Private Limited was an independent company with completely different set of shareholders and directors. The A.O has not brought on record any facts to support his conclusion in Paragraph (b)(vi) of the Assessment Order, " All these factors indicate that control and management of these three companies are with common set of people". It is also brought to my notice that substantial no. of shareholders of appellant have no continuing interest in M/s.



Venkateshwara Buildtech Private Limited and now only a small shareholding of 1.01% shares is held by Sh. Sunil Gandhi and his family. The entire shareholding of the appellant in M/s. Venkateshwara Buildtech Private Limited i.e. 375,000 equity shares amounting to 38.07% shareholding was sold and transferred by the appellant in favour of M/s. Charmwood Realtech Private Limited.”

4. The aforesaid conclusion of the CIT(A) however clearly appears to have ignored the voluminous material which had been taken into consideration by the AO.

5. It was in the aforesaid backdrop that the ITAT ultimately came to reinstate the view taken by the AO and rendered the following observations:-

“23. Considering the sequence of events discussed hereinabove, in the light of the principles laid down by the Hon'ble Supreme Court and also by the Hon'ble Kamataka High Court, we have no hesitation to hold that the share transaction is nothing but a sham transaction, a colourable device to avoid capital gains tax liability and, therefore, has to be ignored. The first appellate authority has accepted the transaction without considering the fact that what is 'apparent' is not 'real' on the facts of the case in hand. We, therefore, set aside the findings of the CIT(A) and restore that of the AO. The assessment order is upheld. The sole ground raised by the Revenue is allowed.”

6. In view of the aforesaid, we find that the appeal raises no substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 5, 2024/MJ