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

\+ ITA 770/2019

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 ..... Appellant

Through: Mr. Aseem Chawla, Sr.SC with Mr. Naveen Rohila, Adv.

versus

BRISK INFRASTRUCTURE & DEVELOPERS PVT. LTD. ..... Respondent

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

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

O R D E R

% **16.04.2024**

1. The instant appeal has been preferred against the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 26 February 2019 and proposes the following question of law for our consideration:-

> "Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal ("ITAT") has erred in sustaining the deletion of addition amounting to Rs. 7,16,28,089/- as income from undisclosed sources."

2. Having heard learned counsels appearing for parties, we take note of the following findings which have been returned by the ITAT on the issue which is sought to be canvassed: -

> "6.1 After perusing the aforesaid findings of the Ld. CIT(A), we are of the view that assessee company is carrying on the business of development of land as developers, sale/purchase of plots, cultivating & selling agricultural products & dealing in shares. It claimed Agricultural Income amounting to Rs.3,56,94,754/- as exempt income u/s 10 of the Act, as per its computation for F.Y. 2008-09, relevant to the A.Y. 2009-10. While calculating net agricultural income, the assessee company has disclosed gross

receipts of Rs.7,16,28,089/- & claimed various expenses at Rs.3,24,07,640/- (direct & indirect) & therefore, the N.P. Ratio was worked out at 45.24% approximately on such Agricultural Income. On being asked, the assessee company filed details of land, that the assessee company used for cultivation along with names, addresses of farmers from whom the lands were taken on lease for agricultural purposes along with Mastiput Tehsil, Khata No. area etc. It also submitted copies of lease deed executed on December 15, 2008 with the 136 farmers. The assessee company also submitted copies of ownership documents in respect of Lessors and also stated that Land Rent/Cess/Revenue tax etc was to be paid by the lessor as per the Land Lease Agreement (Clause NO.6). The AD, however, issued commission to the concerned Authorities at Orissa & got an enquiry report, conducted by the local Income Tax Office at Jeypora, Orissa, based on ITO/ITI report where the local enquiries at Village Mastiput reveal that two persons having confirmed that the no such cultivation activity was undertaken by the appellant company. One of them happened to be 5arpanch 5h. Jeenabandhu Jani of the Village Mastiput, who has however furnished a certificate dated 28.12.2011 through the assessee company before the AD, stating that various vegetables like Gobi, Brinjal, 5himla Mirch & tomato etc are being grown in the Village Mastiput & its surrounding areas for sQmany years & one company named Brisk Agro Farms did cultivate vegetables in the village Mastiput. Hence, not such credence can be given to his statement. The other person who the Inspector of Income Tax, met with Mr. Biswasion Takri S/o Sh. D.N. Iswardan, who happened to be the husband of Mrs. D.N. Badaseba, who stated that Mrs. D.N. Badaseba (Spouse), Mrs. D.N. Subasini -Lily, Mrs. D.N. Chandrika Ratnavati Estana & Mrs. D.N. Christina Luisi are four sister who are having approximately fifty acres of land as agricultural property, through having their own respective families, however, have been cultivating the lands jointly & that they have not signed any agreement with any company or outsider. However, the LT.I recorded the statement of the husband of Mrs. D.N. Badnseba & what precluded him from recording statement of the lessor herself is not clever. In any case, even Mrs. D.N. Badaseba has herself furnished a duly sworn affidavit to the effect that she did execute lease deed agreement dated 15.12.2008 with the assessee company & received a sum of RS.24,905/- vide cheque No.217116 which could not be controverted by the Assessing Officer. Therefore, the statement given by Mr. Biswasion Takri is not reliable & moreover, there might be confusion in his mind as the assessee under took cultivation in the F.Y. 2008-09, while the statement of the two persons were recorded by ITI in the F.Y. 2011- 12 i.e. after approximately three years. We further note that the Assessing Officer also relied upon extracts of downloads from www.kzndae.gov.za/Link Click aspx? fileticket for Length of

Growing period for crops and effects of temperature and also extracts downloaded from Orissa Tourism Site reg climate in Orissaa and it has been mentioned in Orissa Tourism site that winter is not very sever except in some areas in Koraput (Tehsil Koraput in which Mastiput Manja exists) & Phulbani where minimum temperature may drop to 3-4C & crops such as cabbage, lettuce, onion & potato, the entire crops might be ready for harvesting within a few days, but usually down over a longer period. Moreover, the appellant had taken the Total Area as per lease agreement of 2100.55 Acres by signing Lease Agreement with 136 farmers. The AO also relied upon a news article from National Daily The Hindu' with a Captioned Title This farmer earns RS.22 lakh a year from 2.1 acres of land in Doddaballapur, Bangalore Suburb. Going by AO analogy, assessee could have earned over 220 crores in a year. Therefore not much reliance can be placed on such articles & downloads which are in effect supporting the case of assessee only. Moreover, the assessee has cited number of documentary evidence in support of the claim.

Further, the Assessee has made total sale of Rs. 7,16,28,089/- during the under assessment.

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6.1.1 We further note that the balance sale of approx. 40% is made in cash. Out of the above parties, except M/s Uma Trading Company and Krishan Trading Company the other concerns cleared there balance during the year under assessment. The assessee stated to have filed relevant details of all the above mentioned parties before the AO during assessment proceedings. For verification purposes and as to whether the appellant has filed necessary details and has submitted ledger copy of these parties during assessment proceedings or not, the copies of Ledger accounts of various concerns/individuals to whom assessee has sold on credit basis agricultural produce during F.Y. 08-09 amounting to Rs.4,28,43,545/-, were forwarded to the AO. The AO has confirmed in the Remand Report that all the above mentioned parties have submitted copy of ledger account of M/s Brisk Agro in their books of accounts, copy of bank statements and in some cases, copies of ITRs. The AO has in fact, not pointed out any difference etc. in the statement submitted by the parties in response to notice u/s 133(6) of the Act and the details submitted during assessment proceedings. AO has also mentioned that from the perusal of ledger account as well as assessment record, there is credit sale in respect of Uma Trading Company and Krishna Trading Company and there is no balance outstanding in other accounts. As regards the fact that parties did not attend in response to notice issued for personal deposition, it is seen that no notice issued by the AO was received back undelivered. It shows that addresses of the parties are genuine. However, the fact remained that they did not respond to the summons issued by the Assessing Officer, particularly in regard to the verification of identity creditworthiness and genuineness of the transactions including the banking transactions. However, they have confirmed the said transactions with other evidences. Moreover, the AO has not made any other independent enquiry to disprove the identity, capacity and genuineness of such transactions, as established by the respective Ledger Accounts filed by the said parties, bank statement and in some cases, copies of ITRs as well. Therefore, the dissatisfaction recorded by the AO in this regard is primarily based on surmises and conjectures and not on the basis of proper appraisal of evidence and therefore, not on the basis of sufficient records. The action of the Assessing Officer's also not justified merely on Inspector's Report regarding non conduct of agricultural operations by the assessee company in the year under appeal, as the contents of the said report have been effectively controverted by the assessee company and which has not been out rightly rejected by the AO. Therefore, addition on account of 'Agricultural Receipts' as has been treated by the AO as Income from Undisclosed Sources' was found to be based on unsubstantiated material on record and therefore, cannot be sustained, particularly when the assessee has filed the relevant details with evidence before the AO in an effective manner. Therefore, Ld. CIT(A) has rightly accepted the plea of the assessee and directed the AO to delete the addition of Rs.7,16,28,089/- on account of his treating such income as 'Income from Undisclosed Sources', which does not need any interference on Our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue."

3. We find that the conclusion of the ITAT are essentially findings of fact and thus do not merit any interference.

4. The appeal fails to raise to any substantial question of law. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 16, 2024/p