$~22

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

\+ ITA 920/2019

PR COMMISSIONER OF INCOME TAX (CENTRAL)-1 ..... Appellant

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary & Mr. Aditya Gupta, Advs.

versus

SMT. KUNDAN SINGH ..... Respondent

Through: Mr. Gaurav Jain & Mr. Manish Yadav, Advs.

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

O R D E R

% **12.02.2024**

1. The appellant seeks to question the judgment rendered by the Income Tax Appellate Tribunal [“**ITAT**”] dated 29 April 2019 and place the following questions of law for our consideration:

A. Whether on the facts and in the circumstances of the case the ITAT erred in deleting the addition of Rs. 4,85,74,816/- by holding that version of the assessee to be correct even when no documentary evidence was submitted in support of the contention that the Agreement to Sell [“**ATS**”] was cancelled and ignoring all settled principles of law?

B. Whether the ITAT is justified in shifting onus to the Income Tax Department [“**Department**”] whereas in law the assessee was liable to furnish explanation on the incriminating seized material under Section 132(4A) and 292C of the Income Tax

Act, 1961 [“**Act**”] the assessee failed to rebut the presumption under Section 292C by way of submission of cogent evidence such as cancellation/termination/ settlement deed?

C. Whether on the facts and in the circumstances of the case the ITAT has erred in ignoring the standard of evidence (preponderance of probability) adduced by the AO in this case wherein the AO has sufficiently proved that the agreement was acted upon?

2. The dispute appears to emanate from an ATS which was executed in favour of the assessee sometime in October 2008. The aforesaid ATS insofar as consideration for the land parcel comprised in Khasra No. 31/7 (0-15) and 31/14 (0-5) situated in the Revenue Estate of Village Mehrauli, New Delhi [hereinafter referred to as “**Land Parcel –A**”] is concerned, was shown to be Rs.2,97,87,408/-. Insofar as the other land parcel bearing Khasra No. 31/7 (0-18) and 31/14 (0-2) situated in Revenue Estate of Village Mehrauli, New Delhi [hereinafter referred to as “**Land Parcel –B**”] is concerned, the total sale consideration was shown as Rs.2,97,87,408/-. The ATS thus, comprised of both the aforenoted land parcels. Apart from the above, the ATS also acknowledged a payment of Rs. 50,00,000/-, having been made over in cash and constituting token payment.

3. It was the case of the assessee that upon her husband realizing that the vendors were over-charging and were seeking to defraud, the ATS was not proceeded with further. Ultimately, a Sale Deed came to be executed in respect of Land Parcels A and B on 19 January 2009 for a total consideration of Rs. 31 Lakhs and Rs. 29 lakhs, respectively. It is in the aforesaid backdrop that the case appears to have been taken up for scrutiny by the appellant.

4. The appellant essentially appears to have taken into consideration the aspect of total sale price as disclosed in the ATS and the sale thereafter being culminated at a much lower rate. They also took into consideration some of the cheques which found mention in the ATS being also referred to in the Sale Deed.

5. The Commissioner of Income Tax (Appeals) ["**CIT(A)**"] deleted the addition of Rs. 4,85,74,816/- noting that there was no material which could have established that the transaction was undertaken at the consideration value as was mentioned in the ATS. It also found that the valuation of the property was as per the circle rates and thus compliant with the provisions made in Section 50C of the Act. Ultimately, the ITAT has on an overall consideration of the aforesaid, while upholding the deletion of the addition of Rs. 4,85,74,816/- remitted the matter and restricted it to the addition of Rs. 50,00,000/-. Undisputedly, the payment of Rs. 50,00,000/- as token money was an aspect which was conceded to even by the assessee.

6. On an overall consideration of the aforesaid, we find that the judgment impugned is concluded by findings of fact and raises no substantial questions of law. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 12, 2024/kk