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

\+ ITA 416/2022

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

Through: Mr. Aseem Chawla, SSC along with Ms. Pratishtha Chaudhary, Ms. Monica Benjamin, JSC and Mr. Naveen Rohila, Adv.

versus

VISHNU APARTMENTS PVT. LTD. ..... Respondent

Through: Mr. Sachit Jolly, Adv.

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

O R D E R

% **03.05.2024**

1. The Principal Commissioner assails the judgement of the Income Tax Appellate Tribunal ["**ITAT**"] dated 10 October 2019 and has proposed the following questions of law for our consideration:-

> "A. Whether in the given facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal has erred in holding that rejection of books of accounts is a mandatory pre-condition before referring the matter to the Departmental Valuation Officer ('DVO') for the purpose of determination of the cost of Construction?
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> B. Whether the Hon'ble Income Tax Appellate Tribunal has erred in following the decision rendered by the Hon'ble Supreme Court in the case of *Sargam Cinema vs. Commissioner of Income Tax [328 ITR 513 (SC)]* without appreciating the insertion of Section 142A of the Income Tax Act, 1961 introduced vide Finance Act, 2004?
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> C. Whether the Hon'ble Income Tax Appellate Tribunal has erred in not sustaining the addition of Rs.90,50,894, relatable to the cost of construction of the project basis the DVO Report on the premise that the difference between the value declared by the Respondent/Assessee and the DVO is less than 3% and therefore

constitutes an insignificant difference?"

2. Having heard Mr. Chawla, learned counsel in support of the appeal, we find that the issue which stands raised essentially stands concluded against the appellant bearing in mind the judgment rendered by the Division Bench of the Court in **Commissioner of Income-tax vs. Ambience Developers and Infrastructure P. Ltd.** [2012 SCC OnLine Del 3928] wherein the following was observed:

> "16. In view of the above, it is evident that the valuation in this case was uncritically accepted by the AO. As can be seen from a comparison of the valuation by the assessee, with that of the DVO, the variation is 3.86%. This is a very minor variation, having regard to the large amounts involved. Besides, the fact that the AO did not examine the variations, with specific reference to any items of expenditure that were unreasonable, or showed wide variation, these differences can also be put down to differing perceptions, and the practice adopted by the concerned business activity.
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> 17. In view of the above discussion, and having regard to the fact that the variation in valuation, in this case between what was disclosed by the assessee and what was indicated by the DVO is not significant, this court is of opinion that there is no infirmity in the findings contained in the impugned order of the Tribunal. No substantial question of law arises for consideration. The appeals are, therefore, dismissed."

3. Undisputedly, the variation between the valuation as relied upon by the assessee and that which was found by the Departmental Valuation Officer is 2.54%. Bearing in mind the insignificant variation, we find no reason to interfere with the order of the ITAT.

4. Accordingly, and in the light of the principles laid down in *Ambience Developers*, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 03, 2024/neha