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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 33/2024
PR. COMMISSIONER OF INCOME TAX (CENTRAL),
GURUGRAM Appellant
Through: Mr. Puneet Rai, Sr. SC

versus

VATIKA LIMITED Respondent
Through: Counsel (appearance not given)

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

% **ORDER**
12.01.2024

CM APPL 2019/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL 2020/2024 (delay in filing)

3. This is an application filed by the appellant seeking condonation of 238 days delay in filing the present appeal. For the reasons stated in the application, the delay of 238 days in filing the appeal is condoned.
4. Application is disposed of.

ITA 33/2024

5. Having heard Mr. Rai, learned counsel for the appellant and on perusal of the record, we find that the dispute essentially emanated from certain additions which were made in the hands of the assessee and which in turn rested upon a Memorandum of Understanding ['MoU'] which disclosed the value of the transactions to be



Rs.18,22,50,000/-. Undisputedly, however, the instrument which came to be executed showed the transaction value at Rs.9,47,18,750/-.

6. Mr. Rai has taken us through the order of the Commissioner of Income Tax (Appeals) [**'CIT(A)'**] and more particularly to the following findings which came to be returned:-

“6.5.2 The sale deed executed on 24.12.2015 which mentions sale price of Rs.9,47,18,750/- is duly signed by Sh. Digvijay Kapuria, managing director of M/s.Boss Gears Limited and Sh. Sukhpal, employee of M /s. Vatika Limited. The witnesses are Sh. Yuvraj Kapuria from M/s. Boss Gears Limited and Sh. Ashok Kumar Sharma Advocate.

6.5.3 Thus, the difference between MOU and sale deed is only three months and 22 days. The assessee was given adequate opportunity to furnish explanation regarding the reduction of price of Rs.8,75,31,250/- (Rs.18,22,50,000 -9,47,18,750) during this period of about three months.

6.5.4 Firstly, the assessee has not challenged veracity of the MOU seized and hence, contents thereof are admitted to be true by the assessee.

6.5.5 Secondly, in statement on oath of Sh. Gautam Bhalla, Managing Director of the assessee, recorded u/s 132(4) on date of search, he could not furnish satisfactory reply regarding fall in price by nearly 50% within a period of three months. He stated that the fall in price was due to amount seller had to pay to DTCP Haryana. However, from perusal of details filed, the amount payable to DTCP Haryana was only Rs. 6,28,702/-. Hence it could not possibly be the reason for fall in price by Rs. 8.75 crores. In his statement, Sh. Gautam Bhalla stated that fall in price was due to various encumbrances. However, neither in assessment proceedings nor appeal proceedings, any other encumbrances were pointed out with supporting evidence.”

7. However, on a consideration of the material which existed on the record and the CIT(A)’s order, the Income Tax Appellate Tribunal [**'ITAT'**] has returned the following findings:-

“17. However, we find that though the statement of Shri Yuvraj was recorded but no statement of Shri Digvijay was recorded who also happens to be one of the signatory to the MOU. In our



considered opinion, the initial burden is on the revenue to establish that the assessee had made investment of the sum alleged to have been invested and no such evidence has been brought on record by the revenue to establish that the assessee has made investment of Rs. 18,22,50,000/- and on the contrary, the assessee has successfully demonstrated that the said land has been purchased for Rs. 9,47,18,750/-.

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23. It is also an undeniable fact that the seller has admitted to have received Rs. 9.47 crores as against Rs. 18.22crores alleged by the Assessing Officer. Therefore, the burden is squarely upon the revenue to prove that the actual transaction was of Rs. 18.22 crores, which it has grossly failed to establish, and most importantly, assessment order of the seller M/s Boss Gears Ltd., mentioned elsewhere, and exhibited at page 609 of the Paper Book clearly demonstrates that the sale consideration in the case of the seller has been accepted at Rs. 9.47 crores and by any stretch of imagination it cannot be accepted that the Assessing Officer of M/s Boss Gears Ltd. was unaware of the fact that survey operation was conducted at its premises during the financial year relevant to the Assessment year considered by him while framing the said assessment order. We, therefore direct the Assessing Officer to delete the impugned addition of Rs. 8,75,31,250/-. The grounds argued before us are allowed”.

8. Bearing in mind the aforesaid and an evident failure on the part of the appellant to provide any cogent evidence or material which may have validated the addition, we find no ground to interfere with the view as taken by the ITAT.

9. Consequently, no substantial question of law arises in the instant appeal. The appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.

JANUARY 12, 2024

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