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

\+ ITA 341/2011

CIT ..... Appellant

Through: Mr. Puneet Rai, Sr. Standing Counsel alongwith Mr. Ashvini Kumar and Mr. Rishabh Nangia, Advocates

versus

MORAL TRADING & INVESTMENT LTD ..... Respondent

Through: Mr. Rajiv Saxena, Ms. Sumangla Saxena, Ms. Niharika Jauhari and Mr. Shyam Sundar, Advocates

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

ORDER

% **04.03.2024**

1. We note that the Commissioner seeks to question the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 30 April 2010 and proposes the following questions of law for our consideration.

> "2.1 Whether ITAT was correct allowing the benefit of short term capital loss of Rs.8,64,15,538/- against Rs.37,60,41,886/- computed by the Assessing officer as short term capital gain.
>
> 2.2 Whether the transactions regarding Hotel Queen Road Pvt. Ltd. between the Assessee company and Shri R.P.Mital were in the nature of "colourable transaction."

2. We note that the issue of short term capital gain itself had come to be raised consequent to the allotment of certain shares. That allotment came to be annulled by the High Court in **Hillcrest Realty SDN BHD v. Hotel Queen Road Pvt. Ltd.** [2013 SCC OnLine Del 2278] as would be evident from the following findings:-

"48. The upshot of the above discussion is that the impugned decision of the CLB upholding the validity of the Board resolutions dated 27th July 2004, 7th January 2005 and 10th May 2005 cannot be sustained in law. To that extent Co. Appeal (SB) No.4 of 2006 is allowed.

49. The next question concerns the validity of the directions issued by the CLB in para 50 of the impugned order regarding allotment of shares to Mr. Ashok Mittal. Since the transfer of shares to Mr. R.P. Mittal by Moral is *ab initio* invalid, the question of allotting shares on the same basis to Mr. Ashok Mittal obviously cannot arise. Consequently there is no need to examine the further question whether Mr. Ashok Mittal in fact contributed Rs.5.5.crores for the acquisition of HQR shares by Moral. The directions in para 50 of the impugned order of the CLB are also accordingly set aside. Co. Appeal (SB) No. 5 of 2006 is allowed and Co. Appeal (SB) No. 10 of 2006 is dismissed".

3. The appeal which was preferred against the aforesaid decision in the Hon'ble Supreme Court also met a similar fate, wherein, it held that no interference was called for in the decision of the High Court.

4. Since the allotment itself has come to be annulled, the question of short term capital gain would not arise.

5. We consequently dismiss the present appeal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 4, 2024
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