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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 1230/2018

THE PR. COMMISSIONER OF INCOME TAX -6

..... Appellant

Through: Mr. Ruchir Bhatia, SSC.

Versus

MRG PROMOTERS PVT. LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR

KAURAV

ORDER

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05.04.2024

1. The Principal Commissioner challenges the judgment rendered by the Income Tax Appellate Tribunal [“ITAT”] dated 13 April 2018 and has proposed the following questions for our consideration: -

“2.1 Whether on the facts and circumstances of the case and in law, the Id. ITAT erred in deleting the disallowance of Rs.11,06,69,987/- made by the Assessing officer under section 40(a)(ia) for non-deduction of TDS under section 194C of the Income Tax Act, 1961?

2.2 Whether on the facts and circumstances of the case and in law, the Id. ITAT erred in deleting the addition of Rs.3,28,90,154/- made by the Assessing officer by rejecting the books of account of estimating the profit @25% of the total value of cost by adopting the percentage completion method of accounting?

2.3 Whether on the facts and circumstances of the case and in law, the Id. ITAT erred the addition of Rs.3,28,90,154/- made by the Assessing officer by rejecting the books of account and estimating the profit @ 25% of the total value of cost by adopting the percentage completion method of accounting as required as per accounting standard 7 read with accounting standard 9?

2.4 Whether on the facts and circumstances of the case & in law, the Id. ITAT erred in not adjudicating on the issue of non-



confirmation of 29 creditor, out of 46 creditors, in response to the notice under section 133(6) of the Income Tax Act, 1961?”

2. Insofar as the issue pertaining to Section 194C of the Income Tax Act, 1961 [“Act”] is concerned, the ITAT has observed as follows:-

“6. Undisputedly, tax on the amount in question has been deducted at source by AMR and paid to the Government. When AMR, a 99% holding company of the assessee company, was to act on behalf of the assessee company, purchased the raw material, carried out all administrative work, make all necessary payments on its behalf and also accepted booking amount, AMR made the payment to various persons after deducting the necessary TDS on behalf of the assessee company, section 194C is not attracted and provisions contained u/s 40(a)(ia) of the Act are not applicable. When Id. CIT (A) has duly examined the bank accounts of AMR showing advances received from clients and payment for expenses and has also perused the ledger account of the payee in books of AMR where TDS has been shown as deducted on the payment and deposited in the Punjab National Bank, Kundli, the assessee company cannot be penalized u/s 40(a)(ia) of the Act as the entire arrangement for making payment of TDS is in accordance with the agreement entered into between the assessee company and AMR (99% holding company). So, in these circumstances, we find no illegality or perversity in the deletion made by Id. CIT (A). Consequently, ground no.1 is determined against the Revenue”

3. In view of the undisputed position that the entire tax liability was duly deposited by AMR Infrastructure, we are of the considered opinion that the additions under Section 40(a)(ia) of the Act would clearly not sustain.

4. Proposed questions 2.2 and 2.3 proceed on the basis of the Assessing Officer [“AO”] having rejected the books of account and thereafter having proceeded to apply the Gross Profit [“GP”] rate of 25%, estimating the same on the basis of the GP rate as declared by DLF for the purposes of working out the value to be ascribed to works in progress.

5. The Commissioner of Income Tax [“CIT(A)”] had struck down



the aforesaid action noticing that it would be wholly inequitable to compare the respondent assessee with DLF. Dealing with the aforesaid aspect, the ITAT has held as follows: -

“7. AO made addition of Rs.3,28,90,154/- by rejecting the books of account by estimating the profit @ 25% of the total value of the cost of adopting percentage completion method of accounting, which the Id. CIT (A) has deleted. AO has taken into account GP rate of DLF @ 20% and stated that in case 20% of GP is applied, the profit rate will be 25% of the cost.

8. Perusal of the assessment order goes to show that AO applied Percentage Completion Method (POCM) on work-in-progress of Rs.13.15 crores declared by the assessee company and treated the increase in work-in-progress during the year as project completed and proceeded to assume that 25% of the total value of work-in-progress during the year is recognized as profit of the year. AO arrived at this percentage by applying indirect method. Secondly, AO applied 20% of the GP declared by DLF and then proceeded to take work-in-progress of Rs.13.15 crores as against 25% of the same i.e. Rs.3,28,90,154/- as gross profit.”

6. We find, in light of the above, that no substantial question of law can be said to arise.

7. Insofar as the last question is concerned and since no additions were ultimately made, we find no ground to entertain the appeal on that score.

8. In view of the aforesaid, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.

APRIL 5, 2024

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