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

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Date of Decision : 17.03.2025+ **ITA 50/2023****PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2**

.....Appellant

Through: Mr Indruj Singh Rai, SSC, Mr Sanjeev Menon and Mr Rahul Singh, JSCs and Mr Gaurav Kumar, Advocates.

versus

M/S SANSKAR HOMES PVT. LTD.

.....Respondent

Through: Mr Vikas Jain, Mr Aviral Saxena, Ms Shrawani and Mr Hardik Jayal, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 07.03.2019 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.4430/DEL/2016 in respect of the assessment year (AY) 2010-11.

2. The said appeal was preferred by the Revenue impugning an order dated 23.05.2016 passed by the learned Commissioner of Income Tax (Appeals) [**CIT (A)**] in Appeal No.67/2013-14, whereby the appeal preferred by the Assessee against the assessment order dated 26.03.2013



was partially allowed.

3. On 28.02.2024, this court had admitted this appeal on the following question of law:

“A. Whether the ITAT on the facts and in the circumstances of the case and in law, has erred in deleting the disallowance of Rs.7,73,74,500/- made by the Assessing Officer on account of violation of Section 40A(3) of the Act?”

4. The controversy in the present case arises in respect of the disallowance of an amount of ₹7,43,74,500/- which is the amount paid by the respondent (Assessee) for purchase of the first and second floors of the property bearing No. F-60, Poorvi Marg, Vasant Vihar, New Delhi [**the subject property**] to M/s.Surya Realtech Private Limited.

5. The Assessee entered into a collaboration agreement dated 18.03.2008 for the construction of the subject property. However, thereafter, the Assessee had entered into another agreement dated 14.02.2009 for purchase of the first and second floor of the subject property. A part of the said consideration was paid in cash. According to the Assessee, the amount spent is required to be treated as an investment and, therefore, there could be no disallowance. Accordingly, the Assessing Officer (AO) has disallowed the said expenditure (₹2,74,00,000/-) in respect of the first floor of the subject property and (₹4,69,74,500/-) in respect of the second floor of the subject property, under Section 40A(3) of the Act.

6. The Assessee had appealed the said decision before the CIT(A), *inter alia*, claiming that it did not hold the said property as stock-in-trade. Thus,



the amount spent for acquiring the first and the second floors of the subject property were not debited to the profit and loss account. Since, the Assessee had not claimed any expense on the aforesaid count, there could be no disallowance under Section 40A(3) of the Act in respect of the amount spent for purchasing the two floors (first and second) of the subject property.

7. Aggrieved by the said decision, the Revenue had preferred the aforementioned appeal [ITA No.4430/DEL/2016] before the learned ITAT.

8. The learned ITAT found no fault with the decision of the CIT(A) in finding that the acquisition of the two floors of the subject property was in the nature of investment and not in the nature of stock-in-trade. The relevant extract of the decision of the learned ITAT is set out below: -

“9. We have gone through the record in the light of the submissions made on either side. It could be seen from the record that the disallowance was made by the learned AO u/s 40A(3) in respect of the cash component of the advance amount paid for purchase of the property. According to the assessee, the nature of the property was an investment whereas according to the revenue, the assessee held it as stock-in-trade and thereby Section 40A(3) is attracted. Learned CIT(A) rightly observed that the books of account of the assessee were not rejected and the addition appears to balance on the only fulcrum of assessee's intention. Basing on the record, learned CIT(A) rejected the conclusion that it was in the nature of investment [*sic rect.* Stock-in-trade] and Section 40A(3) is not applicable.

10. Assessee produced the balance sheet as on 31.3.2009 with its entire schedule before the Id. AO showing the investments and schedule 'G'



clearly shows the first and Second Floor of F-60, Poorvi Marg, New Delhi as investment in property. This balance sheet was prepared as on 31.3.2009 and the date of balance sheet was 10.7.2009 much prior to the search that took place on 7.8.2010. It could further be seen that the said property was sold in the AY 2011-12 and 2013-14 and the computation of income clearly shows the claim of short term capital gain and the assessment years for those year unmistakably establish the said fact. Assessment order for the AY 2011-12 is at page no.244 and the computation of income is at page no.249 of the paper book so also in respect of the AY 2013-14, assessment order is at page 269b and computation of income is at page 271 of the paper book. Balance sheet dated 10.7.2009 for the year ending 31.3.2009 is at page no.17 whereas Schedule 'G' showing the property now under consideration is at page no.22. These documents clearly establish that it is not an afterthought for the assessee to show that relevant property was acquired not as stock in trade but as an investment. The balance sheet prepared more than one year prior to the search is clearly establishing the same.

11. In the light of the evidence above, we do not find any reason to hold that the impugned order suffers any illegality or irregularity. We uphold the same and find the appeal of the assessee as devoid of merits. Appeal is accordingly dismissed.”

9. It is the Revenue’s case that the finding of the learned CIT(A) and the learned ITAT are erroneous in as much as the Assessee has in fact reflected the assets purchased being first and second floors of the subject property, as stock-in-trade and the amount was also debited in its P & L Account.

10. In view of the above, this court had passed an order dated 28.02.2024



directing the Assessee to file the relevant documents. In compliance with the said order dated 28.02.2024, the Assessee had filed the affidavit annexing therewith the balance sheet for the financial year ending 31.03.2010.

11. Undisputedly, the balance sheet reflects the assets in question (first and second floors of the subject property) as an investment. The learned counsel for the Revenue is unable to draw the attention of this court to any material which would suggest that the amount spent by the Assessee was debited to its P&L Account or that the final accounts of the company for the relevant financial years reflect the first and second floors of the subject property as stock-in-trade and not as an investment.

12. In view of the above, we find no grounds to fault the decision of the learned ITAT in upholding the learned CIT(A)'s decision that no disallowance under Section 40A(3) of the Act is admissible as the Assessee had not claimed the amount spent on purchasing the first and second floors of the subject property as expenditure. Since the amount is not claimed as an expenditure, the question of disallowance of the same does not arise.

13. In view of the above, the question of law as framed is answered in the negative; that is, in favour of the Assessee and against the Revenue.

14. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 17, 2025

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[Click here to check corrigendum, if any](#)