



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

**ITA NO.262/2003**

Judgment delivered on: 28.01.2004

**M/S PAWHA BUILDERS PVT LTD**

...Petitioner

- versus -

**COMMISSIONER OF INCOME TAX**

...Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr B.B. Ahuja, Sr. Advocate with Mr Manish Kumar

For Respondent : Ms Prem Lata Bansal with Mr Ajay Jha

**CORAM:-**

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

**CHIEF JUSTICE (ORAL)**

1. The assessee being aggrieved by the order passed by the Income-tax Appellate Tribunal in ITA NO.2150/DEL/98 for the assessment year 1994-95 decided on 28.02.2003 has preferred this appeal, inter alia, raising the question that, the appellant being the owner of the property in question and receiving the entire rent, the Tribunal has committed grave error in arriving at the conclusion that



the assessee is not the absolute owner of the property and is entitled to receive only 30% of the annual rent of the property and therefore is eligible for a deduction of 1/5<sup>th</sup> on only 30% of the rent which he was actually receiving.

2. There is an agreement on the record styled as a Collaboration Agreement between S.K.Pawha, P.P.Pawha and Varun Pawha on the one hand and the assessee/appellant on the other. Following are the relevant clauses to be taken into consideration:

- "2. It is further agreed between the parties that after the super-structure of the entire building on the said plot has been completed by the Second party in accordance with the sanctioned building plans, the property will be given on rent and the rent proceeds will be shared by the First Party and the Second Party in the ratio of 70% & 30% respectively from the date of renting of the property.
4. That the Owners further assure the Builders that they are the exclusive Owners of the said plot of land and as such they are competent to enter into this Agreement.
11. That the builders shall become Owners of the superstructure and the Ownership of land rights shall remain with the Owners i.e. the party of the first Part. It is further agreed between the parties that after the super-structure of the entire building on the said plot has been completed by the Second Party in accordance with the sanctioned building plans, the property will be given on rent and the rent proceeds will be shared by the First Party and the Second



Party in the ration of 70% & 30% respectively.

14. That in case both the parties wish to sell the super structure and the land beneath, they can do so and divide the proceeds in their respective ratio of 70% and 30%.
  16. That the Owners shall bear all the outstanding charges i.e. house tax, electric and water bills etc. etc. upto the date of signing of this Agreement. Thereafter all taxes, liabilities, expenses shall be borne by both the parties or their nominees/assignees in the ratio of 70% and 30%.
  17. That the Owners undertake to assist and sign immediately all such documents as may be necessary from time to time to enable the Builders/Developers, to discharge the obligations undertaken by them without any delay.
  18. That the Owners and Builders have entered into this agreement purely on Principal to Principal basis and nothing stated herein shall be deemed to or construed as a partnership between Builders and Owners nor shall Builders and Owners in any manner constitute an association of person(s). Both the parties shall be liable in respect of income tax and other fiscal liabilities only in respect of their own share.”
3. The learned counsel has relied upon various decisions to convey that he, being the owner of the building in question, is entitled to get the benefit not of 30 per cent but of 100 per cent of the rent in accordance with law. He has relied upon the following decisions :

“226 ITR 625, 120 ITR 476, 160 ITR 689, 254 ITR 625.”



4. Suffice to say that in the instant case, considering the aforesaid factual aspect, the Tribunal has decided the matter and in our opinion there is no question of law. Learned counsel has stated that lease deed has also been produced on record. We have taken a note of it. Inter se arrangement made between the parties is required to be taken into consideration while deciding this matter.

5. Hence, the appeal is dismissed.

  
**CHIEF JUSTICE**

  
**BADAR DURREZ AHMED, J**

January 28, 2004  
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