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

\+ ITA 311/2004

M/S CONSORTIUM TRADING CO. ..... Appellant
Through Mr. C. S. Aggarwal, Sr.Adv. with
Mr. Prakash Kumar, Adv.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr. J. R. Goel &
Mr. R. D. Jolly, Advs.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **05.09.2006**

The Appellant is aggrieved by an order dated 22nd September, 2003 passed by Income Tax Appellate Tribunal, Delhi Bench 'D' in ITA No. 1556/Del/1998 relevant for the assessment year 1994-95.

The brief facts of the case are that the Assessee is a partnership firm consisting of a father and son. They purchased some property in Bombay on 1st February, 1989. The property was let out to a company called M/s. Intercraft Ltd. where the partners of the Assessee were the Chairman and Manging Director.

According to the Appellant the property was let out for an initial period of 10 years from May 1989 to April 1999 with the option to renew it for another period of 10 years.

On 5th August, 1993 a memorandum of understanding was entered into between the Assessee and the subsequent purchaser of the property. We are told on that day itself the tenant vacated the property.

On 31st December, 1993, an agreement to sell was entered into between the Assessee and the purchaser. The sale consideration was Rs. 52,75,000/-. Certain expenses were incurred in respect of brokerage and transfer charges etc. which were reduced from the total sale consideration. The Assessee claimed a further reduction on account of cost of fixtures and vacation charges, being charges paid to the tenant for vacating the premises. For this a reduction of Rs. 17,50,000/- was made. After reducing all the expenses incurred and after reducing the index cost of acquisition, the capital gain was worked out by the Assessee at Rs. 18,13,415/-.

According to the Assessee, the vacation charges of Rs. 12,50,000/- and charges for fixtures of Rs.5,00,000/- were paid to the tenant by two cheques both dated 31st March, 1994.

The Assessing Officer rejected the claim for deduction of Rs. 17,50,000/- which was claimed by the Assessee. The Assessing Officer came to the conclusion that there was no liability on the Assessee to make any payment of Rs. 12.50 lakhs for claiming possession of the premises and Rs. 5 lakhs for improvement and

fixtures and that the payment by the Assessee on 31.3.1994 was a deliberate attempt to reduce the incidence of tax by reducing capital gain.

The Assessee filed an appeal before the Commissioner of Income Tax (Appeals). The appellate authority also recorded a finding that the property was sold without encumbrances on 31.12.1993 and on the date of signing of the MOU there was no liability on the Appellant to make any payment to the tenant M/s. Intercraft Ltd. He also recorded a finding that there was no condition precedent for vacating the property and concluded that there was nothing to support the submission that there was an understanding between the Appellant and the tenant for making payment towards vacation charges and improvement of the property by the tenant. The deduction claimed was treated as an after thought.

A second appeal before the Tribunal filed by the Assessee was rejected by the impugned order. This is how the Assessee is before us in an appeal filed under Section 260A of the Income Tax Act, 1961.

All the authorities have concluded that the question of making payment of vacation charges to M/s. Intercraft Ltd. was an after thought particularly since M/s. Intercraft Ltd. had vacated the premises on 5th August, 1993 or in any event before 31.12.1993 and

payment for vacation/improvement was made only on 31st March, 1994. The documents executed on 31st December, 1993 did not suggest that the tenant M/s. Intercraft Ltd. handed over peaceful and vacant possession of the property to the purchaser on that day only or thereafter. Therefore, there was no occasion to reduce the vacation charges from the gains derived on account of sale of the capital asset.

We are of the view that this is essentially a finding of fact arrived at by all the authorities below and we do not find any perversity in the view taken by them, nor has any perversity been pointed out by the Appellant which would warrant any serious consideration.

Under the circumstances, we find that no substantial question of law arises for our consideration.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

SEPTEMBER 05, 2006
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