



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

+ **ITA No.1168 of 2009**

% Decision Delivered On: 17th September, 2010.

SOUTH DELHI APARTMENTS PVT. LT. . . . Appellant

through : Mr. Pankaj Jain with Mr. Rakesh Jain, Mr. Abhay Jain, Mr. Manish Chowdhry and Ms. Namita Chowdhry, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX . . . Respondent

through: Ms. Suruchi Aggarwal, Standing Counsel.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. We admit the appeal on the following questions of law and also proceed to decide the same, as counsel for both the parties have argued the matter finally at this stage itself.

“(1) Whether on the true and correct interpretation of the provisions of Section 254 of the Income Tax Act, the Tribunal has the powers to enhancement and which is beyond jurisdiction?

(2) Whether on the true and correct interpretation of Section 2(47) of the Income Tax Act, 1961, Section 5 of the Transfer of Property Act, 1882, the Registration of the property in the name of buyer determines the ownership and the title of the property for completing the “transfer”?

2. These questions fall for determination under the following circumstances:



The appellant assessee, which is a private limited company is carrying on the business of real estate since its incorporation. It purchased the first floor of property No. S-302, Panchsheel Park, New Delhi. Original owner of this property was one Shri Baljeet Singh Malhotra. He entered into the collaboration agreement with one Raj Infra Projects (P) Ltd. and under that agreement, this property was constructed and developed. As per clause 2(b) of the collaboration agreement dated 08.07.2002, the owner's shares, i.e., Shri Baljeet Singh Malhotra is as under:

“Entire first floor and part of drive way as shown red in the site plan with 29%. Undivided and impartible right in the land underneath.”

3. Total construction which was carried out in the said property consisted of ground floor, first floor, second floor and fourth floor servant quarters. As mentioned above, out of these, the original owner got entire floor and part of drive way. All four servant quarters were the property of the developer. He sold the first floor to Veera Builders (P) Ltd. for a sum of ₹75 lacs vide agreement to sale dated 08.07.2002. In this agreement, there was no reference to the servant quarters, obviously because he was not having any share therein. Veera Builders (P) Ltd., in turn, sold the said first floor without servant quarters to the assessee for a sum of ₹92.50 lacs vide agreement to sale dated 31.03.2003. The assessee company has sold this first floor again to Shri Pawan Jain and Shri Devender Jain vide sale deed dated 05.12.2003. However, in the said sale deed, there is a mention not only of the first floor but of servant quarters as well. It was the case of the



- assessee that as it had purchased only the first floor from Vec Builders (P) Ltd. without servant quarters. One servant quarters was in fact purchased by Raj Infra Projects (P) Ltd. @ ₹15 lacs.
4. The Assessing Officer (AO), treated the sale of servant quarters by Raj Infra Projects (P) Ltd. in favour of the assessee as sham transaction and made the addition of ₹15 lacs.
 5. The CIT (A) after taking note of the fact and particularly that even Raj Infra Projects (P) Ltd. had shown the said sale in its regular books of account and the sum of ₹15 lacs was shown in the audited books of account and income tax returns and the CIT (A) came to the conclusion that it was not a sham transaction. He, thus, directed the deletion of the said addition of ₹15 lacs made by the AO.
 6. The Department challenged this order of the CIT(A) before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal has reversed that order of the CIT (A). Though the Tribunal has not disputed the facts recorded by the CIT (A), it has gone into altogether different direction in sustaining the order of the AO and set aside the order of the CIT (A). What is pointed out by the Tribunal is that the assessee had purchased the servant quarters along with 4% right of the undivided land. In the sale deed executed by it in favour of Shri Pawan Jain and Shri Devender Jain, there was no transfer of interest of 4% in the undivided land in favour of the said purchaser and the assessee was not able to explain as to what happened to the right in the aforesaid land.



7. Looking into this limited aspect on which the Revenue raised the dispute, learned counsel for the appellant made the statement at the bar that even if the sale deed did not specifically mention about the 4% proprietary share in land pertaining to the said servant quarters, the same was inadvertent. In order to see that this issue is beyond the pale of controversy and undertaking is filed before us that the appellant shall execute a supplementary sale deed with regard to 4% share of the land in servant quarters in favour of the buyer Shri Pawan Jain and Shri Devender Jain, affidavit to this effect is also filed. This takes care of the grievance of the Revenue.
8. In view of the above, order of the Tribunal is accordingly set aside and that of the order of the CIT (A) is restored. This appeal is disposed of in the aforesaid terms.

**(A.K. SIKRI)
JUDGE**

**(MANMOHAN SINGH)
JUDGE**

SEPTEMBER 17, 2010
pmc