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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 388/2012

CIT

..... Appellant

Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel
with Mr. Puneet Gupta, Jr. Standing Counsel.

versus

MOUNTAIN TOUCH BUILDERS P. LTD

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**

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17.07.2012

1. The Revenue claims to be aggrieved by the order of the ITAT in ITA No.4441/Del/10 dated 30.09.2011.
2. The question of law sought to be urged is as to the correctness of the order of CIT (A) as confirmed by the ITAT in regard to the deletion of the amount of Rs.9,19,89,841/- made by the Assessing Officer under Section 69A of the Income Tax Act as unexplained investment.
3. The necessary facts for the purpose of this order are that the assessee was incorporated during the previous year with the object of *inter alia* trading in real estate. It claimed that some agricultural land at Sonapat was purchased from various farmers for a consideration of Rs.9,19,89,841/-. The assessee did not pay these amounts but instead the consideration was paid by two concerns i.e. M/s Jindal Reality Pvt. Ltd. and M/s Shikhar Real Estates Pvt. Ltd. The assessee stated that no bank accounts were maintained and had filed the return declaring loss of Rs.14,775/-. After eliciting details about the purchase and examination of the source for consideration, the AO directed



assessment after including said amount in terms of Section-69A, reasoning that t assessee had not satisfactorily explained the source of investment and the unsecured loans and that the amount had not gone through its account books. The assessee carried the matter in appeal. The CIT (A) after considering all the submissions of the assessee and the Revenue held that the explanation furnished was proper and that the mere circumstance that the entire consideration for acquisition of assets was paid by third party or parties did not render it unexplained. The CIT (A) also noted that the transaction was fully recorded in the books of accounts, i.e., the land was shown as "current assets" and the loans were shown as "unseen – red creditors" in the balance sheet. The CIT (A) also noted that the existing laws in Haryana had constrained the parties from holding the extent of land since it exceeded the permissible area of agricultural land.

4. The Revenue carried the matter further in appeal to the ITAT contending that the deletion of the sum was unjustified. The Tribunal, in its impugned order, held as follows: -

"10. That AO has not cast any doubt about joint development agreement and for purchases assessee filed all the necessary copies of agreement to purchase from farmers, confirmations from M/s Jindal Reality Pvt. Ltd. & M/s Shikhar Real Estates pvt. Ltd, which are available on record. Since the assessee has discharged the onus that lay on it and the unsecured loans are duly reflected in assessee's account, as mentioned above, addition on account of sec.69 was unjustified, which has been rightly deleted by the CIT (A). His order may be upheld.

11. We have heard rival contentions and gone through the relevant material available on record. The AO has placed no doubt or objection on the purchase and sale agreements with farmers. The fact about payment of consideration by associate concerns has been accepted by AO which are duly supported with confirmations and copies of account. No doubt has been raised on the joint development agreement. In view of these facts, we see no justification for the addition made by the AO, CIT (A) has rightly deleted the addition by observing that the transactions have routed through assessee's books of account by above entries. In view thereof, we uphold the order of CIT (A) on the issue in question."

5. We have heard the counsel for the Revenue. In view of the fact that there is no other material on the record to suggest that the transaction – whereby the assessee received amounts from the two unrelated companies – was not genuine, and also having



regard to the circumstance that the purchase took place in the very first year of incorporation, the Court finds no infirmity in the reasoning of the Tribunal.

6. The appeal - ITA-388/20-12 - does not require resolution of any substantial question of law and is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'S. Ravindra Bhat'.

S. RAVINDRA BHAT, J

A handwritten signature in black ink, appearing to read 'R.V. Easwar'.

R.V.EASWAR, J

JULY 17, 2012
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