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

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\+ **ITA 313/2014**

THE COMMISSIONER OF INCOME TAX
CENTRAL-III ..... Appellant
Through: Mr R. Roy Chaudhuri, Senior Standing Counsel with Mr Ajit Sharma, Advocate.

versus

PACL INDIA LIMITED ..... Respondent
Through: Mr Kapil Goel and Mr Ankit Gupta, Advocates.

WITH

14.

\+ **ITA 314/2014**

THE COMMISSIONER OF INCOME TAX
CENTRAL-III ..... Appellant
Through: Through: Mr R. Roy Chaudhuri, Senior Standing Counsel with Mr Ajit Sharma, Advocate.

versus

PACL INDIA LIMITED ..... Respondent
Through: Mr Kapil Goel and Mr Ankit Gupta, Advocates.

AND

15.

\+ **ITA 408/2014**

THE COMMISSIONER OF INCOME TAX
CENTRAL-III ..... Appellant
Through: Mr Rohit Madan and Mr R. Roy Chaudhuri, Advocates.

versus

PACL INDIA LIMITED ..... Respondent
Through: Mr Kapil Goel and Mr Ankit Gupta, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 20.07.2015

1. These appeals under Section 260-A of the Income Tax Act of 1961 ('Act') are directed against the common impugned order dated 18th June, 2013 passed by the Income Tax Appellate Tribunal ('ITAT') dismissing the Revenues appeals, ITAs Nos.2638, 2639 and 3693/DEL/2010 for the Assessment Years 2004-05, 2005-06 and 2006-07. The question considered by the ITAT was whether the Commissioner of Income Tax (Appeals) [CIT (A)] had erred in law and on facts in deleting the disallowance by the Assessing Officer ('AO') of the amount claimed by the Assessee as land development expenditure?

2. The Respondent is engaged in the business of development of agricultural land and sale thereof. The land purchased by it is developed and sold as plots. The Assessee claimed to have engaged contractors for carrying out the development work. Whenever the land was sold, the development

expenses corresponding to that land were debited to the Profit and Loss Account under the head 'land cost' which included the cost price of the respective land and the land development expenses. During the course of the regular assessment proceedings, the Assessee submitted the PAN numbers, bank account details, TDS deducted, etc. in respect of such contractors. It also furnished DVD and photographs to show how barren agricultural land was first purchased and then developed and sold.

3. The case of the Revenue as reflected in the order of the AO dated 31st December, 2008 was that in response to the inquires made one Pradeep Kumar Jindal, the 'kingpin of the group' of contractors purportedly admitted in his statement before the Income Tax Officer ('ITO') on 13th December, 2008 that no work in fact had been done by the contractors and only the bills were raised, cheques received and the and repaid in cash. The details of five cases of payments made to the contractors were set out in para 5.3(1) of the AO's order dated 31st December, 2008. The order also noted that the AOs of Rohtak had finalised assessments under Section 143(3) of the Act in the case of 27 contractors who had shown contract receipts from the Respondent Assessee. It was observed that in those assessment proceedings the said contractors stated on oath that no work had actually been done by them.

Reference was also made to one other contractor Mr Bharat Ram who gave a statement denying execution of any contract awarded to him by the Respondent Assessee. Further, more than 100 of the alleged contractors were not available at the addressees given by the Assessee.

4. When the Assessee was confronted with the above information, it was contended by it that all the contractors were in fact genuine; each of them had PAN numbers; payments had been made through an account payee cheques after deducting TDS and the assessments of some of the contractors had also been completed. The AO , however, did not accept the explanation of the Assessee and added back to the amounts claimed.

5. The appeal filed by the Assessee was allowed by the CIT (A) by the order dated 17th May, 2010 on the ground that during the two searches conducted at the premises of the Assessee on 22nd September, 2005 and 25th August, 2006, no incriminating documents, books of accounts etc. were found or seized to indicate that the Assessee had claimed any bogus expenditure to reduce the burden of tax liability. The CIT (A) observed that the only ground on which the AO disallowed the land development expenditure was that the parties were not found at the given addresses thereby creating suspicion as to the genuineness of the expenditure. It was held that

suspicion, however great, could not substitute for evidence. It was a matter of record that two searches were conducted at the premises of the Assessee on 22nd September 2005 and 25th August 2006 and no incriminating documents, books of accounts etc. were found or seized to indicate that the Assessee had claimed any bogus expenditure to reduce the burden of the tax liability. In the circumstances, the additions made by the AO were directed to be deleted. The AO was directed to examine the land development expenditure disallowed by him in the year in which it was debited to the books of accounts.

6. In dismissing the further appeals of the Revenue, the ITAT in the impugned order noted that the contractors named by the Assessee had in fact been assessed by the Department and in many cases refund had been ordered. It was noticed that the AO had made no effort to verify the details filed by the Assessee and proceeded to inquire into the identity of the contractors through an inspector. These inquiries were conducted long after the work had been executed. The ITAT came to the conclusion that the adverse report of four contractors to whom the payments were made could not override the evidence filed by the Assessee and, therefore, the CIT(A) was justified in deleting the additions "which have been made only on the

basis of a doubt created or suspicion in the mind of the AO". Significantly, the ITAT observed that nothing had been found during the search operation with regard to the land development expenses and the AO had also not taken the post search inquiries to the logical end.

7. Learned counsel for the Appellant urged that the statement made by one of the contractors, Mr Jindal, that bogus entries were made in the books of accounts was not considered either by the CIT (A) and the ITAT.

8. However, the Court finds that both the CIT (A) and the ITAT have in fact discussed the materials on record including the statements of four of the contractors and the report of the Inspector. As rightly pointed out by the ITAT, the evidence submitted by the Assessee including photographs and DVDs demonstrating the land development was not properly verified or inquired onto by the AO.

9. The Court is of the opinion that the concurrent view taken both by the CIT (A) and the ITAT on the evidence placed on the record is a plausible one. On facts, the Court finds no perversity in either order.

10. Consequently, no substantial question of law arises for examination by the Court.

11. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JULY 20, 2015
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