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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 440/2009**

COMMISSIONER OF INCOME TAX, DELHI-IV ..... Appellant
Through: Mr. Sanjay Kumar & Mr. Rahul, Chaudhary, Standing Counsel for the Revenue

versus

DLF UNIVERSAL LTD. ..... Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Ms. Kavita Jha & Ms. Roopali Gupta, Advocates

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 05.09.2017

Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the order dated 6th June 2008 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1848/Del./2000 & ITA No.1803/Del./2000 for the Assessment Year ('AY') 1995-96.

2. While admitting this appeal by order dated 30th November, 2011, this Court framed following questions of law:

> "1. Whether the Income Tax Appellate Tribunal was correct in law in setting aside the Commissioner of Income Tax (Appeals) order wherein it was held that the method of accounting followed by the assessee in past and accepted in earlier assessment years is such that correct income cannot be properly detected from the accounts and the Assessing Officer was justified in invoking the provisions of First Proviso to Section 145(1) of the Income Tax Act, 1961?

2. Whether the Income Tax Appellate Tribunal was correct in law in deletion addition made by assessing officer on account of sale price in respect of constructed/built up properties?

3. Whether the Assessing Officer and the Commissioner of Income Tax (Appeals) were correct in law in re-working the cost of land at the average purchase price of land in Qutub Enclave Complex now known as DLF city by dividing the end of the year by saleable area including lands earmarked for schools, hospitals, clubs and other community building, in each phase?

4. Whether the Income Tax Appellate Tribunal was correct in law deleting the addition of Rs.4,92,27,360/- made by the Assessing Officer on account of contribution to the Shelter Fund?

5. Whether Commissioner of Income Tax (Appeals) erred in law in directing the Assessing Officer to assess the rent receipts form DLF Centre which also includes air conditioning charges as 'Income from House Property?"

3. As far as Question Nos. 1, 2 and 3 above are concerned, they stand answered in the negative, i.e. in favour of the Assessee and against the Revenue by the decision dated 21st December 2016 passed by this Court in the Assessee's own case in ITA Nos. 159/2010 and 326/2010 for AY 1994-95.

4. As far as Question No. 5 is concerned, it stands answered in favour of the Assessee by the order dated 18th May 2017 passed by this Court in ITA No. 407/2009 which is the Assessee's own case for AY 1997-98.

5. As far as Question No. 4 is concerned, the facts relevant to this question are that the Assessee had to pay to the Land and Building Department of the Government of Delhi a certain sum as a part of the contribution to the Shelter Fund, failing which, the land was to be acquired under the Urban Land Ceiling and Regulation Act, 1976 ('ULCRA'). That the land was held as stock-in-trade of the Assessee was not in dispute. However, the AO was of the view that no activity was done on the land during the year in question and, therefore, the expenditure incurred in protecting the land from the acquisition under the ULCRA should be treated as capital expenditure and not as revenue expenditure. It was held that the amount should be capitalised in stock-in-trade. Disallowing the expenditure towards contribution to the Government Shelter Fund, the AO added it back to the total income of the Assessee.

6. After the CIT (A) affirmed the above order, the Assessee went in appeal before the ITAT. In the impugned order, the ITAT observed that the expenditure incurred was not to acquire additional area of land or to improve the title on the land already acquired. The cost was incurred to defend the title over the land already acquired. In that view of the matter, the Assessee's explanation was accepted and the addition was deleted.

7. Learned counsel for the Revenue has placed considerable reliance on the decision of the Bombay High Court in ***Sandvik Asia Ltd. v. Deputy Commissioner of Income-Tax [2015] 378 ITR 114 (Bom)*** in support of the plea that contribution to the fund of the Government to avoid acquisition under the ULCRA should be considered to be a capital expenditure and not a

revenue expenditure.

8. On the other hand, Mr. Ajay Vohra, learned Senior Counsel appearing for the Assessee, states that the said decision distinguished the earlier decision of the same High Court in ***CST v. Brihan Maharashtra Sugar Syndicate Ltd. [1987] 165 ITR 275 (Bom)***. The facts of the latter case were similar to the case in hand in as much as the land that was the subject matter of acquisition under the ULCRA was held as stock-in-trade. Mr. Vohra further placed reliance on the decision of the Supreme Court in ***Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC)***.

9. The facts in ***Sandvik Asia*** *(supra)* show that the land which was subject matter of the ULCRA was the same land on which the factory of the Assessee was situated. Unlike the Assessee in the present case, the Assessee in that case was not in the real estate business. The question of the Assessee, in that case, holding land as stock-in-trade did not arise. The Bombay High Court held on those facts that that the decision in ***Empire Jute Co.*** *(supra)* would have no application since the payment was made in the capital field "and does not in any manner affect the day to day running of the appellant's business." It was held that, for protecting the land from acquisition, the Assessee there was "getting rid of defective title or a threat to litigation". It was held "threat to a certain acquisition would on a higher footing than a threat to litigation".

10. In the considered view of the Court, the facts of the present case are closer to the facts in ***Brihan Maharashtra Sugar Syndicate Ltd.*** *(supra)*. There, the land was held for sugar cultivation so as to carry on business of

manufacture of sugar. In those circumstances, the expenditure incurred to protect the land from being acquired under the ULCRA was held to be a revenue expenditure. In ***Empire Jute Co.*** *(supra)*, the Supreme Court explained the governing principle as under:-

> "4. Now, an expenditure incurred by an assessee can qualify for deduction Under Section 10(2)(xv) only if it is incurred wholly and exclusively for the purpose of his business, but even if it fulfils this requirement, it is not enough; it must further be of revenue as distinguished from capital nature. Here, in the present case, it was not contended on behalf of the Revenue that the sum of Rs. 2,03,255/- was not laid out wholly and exclusively for the purpose of the assessee's business but the only argument was, and this argument found favour with the High Court, that it represented capital expenditure and was hence not deductible Under Section 10(2)(xv). The sole question which therefore arises for determination in the appeal is - whether the sum of Rs. 2,03,255/- paid by the assessee represented capital expenditure or revenue expenditure. (...)
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> (...)
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> 10. When dealing with cases of this kind where the question is whether expenditure incurred by an assessee is capital or revenue expenditure. it is necessary to bear in mind what Dixon, J. said in *Hallstrorm's Property Limited v. Federal Commissioner of Taxation 72 C.L.R. 634* "What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the justice classification of the legal rights, if any, secured, employed or exhausted in the process." The question must be viewed in the larger context of business necessity or expediency. If the outgoing expenditure is so related to the carrying on or the conduct of the business that it may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character, the possession of

> which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure. (...)"

11. In the present case, the fact that the Assessee is holding land in question as stock in trade is not in dispute. The expenditure incurred by it for protecting the land from acquisition in the circumstances should be held to be revenue expenditure. In the circumstances, the Court finds no error committed by the ITAT in coming to the conclusion that the expenditure incurred by the Assessee on account of contribution to the Shelter Fund should be allowed as business expenditure. Question No.4 is accordingly answered in the affirmative i.e. in favour of the Assessee and against the Revenue.

12. ITA No. 440 of 2009 is accordingly disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 05, 2017
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