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

+ **ITA 940/2016**

THE PR. COMMISSIONER OF INCOME TAX -4 Appellant

versus

GYAN ENTERPRISES PVT. LTD. Respondent

ITA 941/2016 & CM APPL. 28555/2017

THE PR. COMMISSIONER OF INCOME TAX -4 Appellant

versus

GYAN ENTERPRISES PVT. LTD. Respondent

Present: Mr. Ruchir Bhatia, Adv. for the Revenue in both the matters.
Mr. M.P. Rastogi and Mr. K.N. Ahuja, Advocates for respondent in both the matters.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **17.05.2018**

The Revenue's grievance in its appeal under Section 260-A of the Income Tax Act, 1961 (hereafter 'the Act') is that the lower appellate authorities fell into error in setting aside the Assessing Officer's (AO) addition of ₹3.22 crores to the declared sale consideration of Rs.5.03 crores received by the assessee for transfer of its shares in M/s Trojan Developers Pvt. Ltd. The assessee held 77% shareholding in the said company. The sale consideration of those shares resulted in the passing of controlling interest in

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M/s. Trojan Developers Pvt. Ltd. The AO was of the opinion that the sale consideration was grossly inadequate given that the most significant or substantial asset held by the company was some immovable property. On the basis of this suspicion, he rejected the sale value and referred the issue to the District Valuation Officer (DVO). The DVO's report valued the immovable property at ₹9.87 crores. The difference between the sale consideration and the value determined by the DVO's report was brought to tax. The AO reasoned that the sum of Rs.3.22 crores set apart but paid to the company really constituted consideration paid to the assessee for the transfer of shares.

The CIT(A) and the Income Tax Appellate Tribunal (ITAT) however disagreed and set aside the addition.

This Court has considered the submissions of the Revenue which urged that the findings of the lower appellate authorities were based on an erroneous premise and that the total amount received by the assessee of ₹8.25 crores had an approximate nexus with its real market value and consequently the AO correctly brought the difference between the declared consideration and the market value of the property to tax.

The assessee had relied upon Clause 2.2 of the Agreement, which stipulated that the sum of ₹3.22 crores was to be paid to the company (and not to the assessee). That addition reads as follows:-

"Purchase Price Payment: In full consideration of the purchase of the sale shares by the purchase from the selling
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shareholders, a total purchase price of Rs.5,03,00,000/- (Rupees Five Crores and three lakhs only) ("Purchase Price"), payable in that manner stated in Schedule 1. In addition, the Purchasers shall pay to the Company a sum of Rs.3,22,00,000/- (Rupees Three Crores and twenty two lakhs only) as Unsecured Loan to enable the Company to repay to the lenders in complete satisfaction of the Unsecured Loan payable by the Company to the lenders of the loan. The Selling Shareholders undertake that before the closing date the selling shareholders shall ensure that the net current assets and investments of the company are reduced to nil and that the only asset in the balance sheet of the company shall be the fixed asset of Real Property and Real Property Leases and there shall be no liability except the loan liability of the company towards the purchasing shareholders. It agreement by the purchasers to the selling shareholder towards the purchase consideration and to the company towards unsecured loans shall collectively exceeds Rs.8,25,00,000/- (Rupees Eight crores twenty five lakhs only)."

As is evident from the plain reading of the condition, the amount was never received by the assessee but rather remained with the company of which the most significant control went to the purchaser. In these circumstances, the rejection of the valuation and the amount brought to tax by the AO was correctly held by the lower appellate authorities to be unjustified. In view of this concurrent findings of fact, no substantial question of law arise on this aspect.

The other issue urged is with respect to the nature of income declared by the assessee. Since it dealt in the business of securities, its treatment of the amount received towards investments was scrutinised by the AO, who felt that the claim for capital gains was

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not warranted. However, the CIT(A) disagreed after noticing that the assessee was maintaining separate books in respect of its investments portfolio on the one hand and in respect of the day-to-day transactions as a securities/shares broker. In view of these findings (which also took note of the CBDT's circular No.4 of 2007 dated 15.06.2007) and the various tests prescribed in the circular, this Court is of the opinion that no substantial question of law arises on this aspect too.

In view of the foregoing discussion, the two appeals are dismissed along with the pending application.


S. RAVINDRA BHAT, J



VINOD GOEL, J

MAY 17, 2018

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