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

Date of Decision: 01.11.2019

\+ ITA 732/2019

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing counsel.

versus

VIRENDER KUMAR BHATIA ..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (Oral):

1. The present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 13.12.2018 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') in IT(SS)A No. 6/DEL/2011 & C.O. No. 93/DEL/2011 for Block Period 1998-99 to 2003-04.

2. The factual matrix giving rise to the present appeal is that Shri Virender Kumar Bhatia, the Respondent (hereinafter referred to as 'the Assessee') floated the company M/s Baani Technologies Pvt. Ltd and purchased the land at village Wazirabad, Gurugram in the name of M/s Baani Technologies Pvt. Ltd.. Vatika Group took over the said Company during Financial Year 2002-03 from Assessee/Respondent. On 08.05.2003, a search and seizure operation was conducted under Section 132 of the Act on Vatika Group.

During the search, the residence of Shri Anupam Nagalia, a chartered accountant and Director in M/s Vatika Land base Pvt. Ltd was searched, alongwith the premises of M/s Baani Technologies Pvt. Ltd.

3. On the basis of evidence collected during pre-search enquiry and from the seized record, the Assessing Officer (AO) held that Vatika Group had made investment of Rs. 4,95,61,000/- to purchase the land from the Assessee- Shri Virender Kumar Bhatia [Respondent] and his family members who owned the land through M/s Baani Technologies Pvt. Ltd. The said Company had only one asset in the form of land measuring around 2.36 acres at Village Wazirabad, Gurugram. The value of land as per balance sheet of Vatika Group was shown as Rs. 2,37,05,540/- as on 31.03.2003. The AO, on the basis of entries relating to purchase of land and documents seized from the residence of Sh. Anupam Nagalia arrived at a satisfaction that Sh. Virender Kumar Bhatia had received unaccounted cash of Rs. 2.42 crores against sale of land at Wazirabad. Further, Shri Anupam Nagalia admitted the entries relating to purchase of land at Wazirabad. Accordingly, the AO issued notice under Section 158BC read with Section 158BD.

4. Thereafter, the Assessee filed return on 01.08.2005 and declared the undisclosed income as NIL. On 17.09.2006, a statutory notice under Section 143(2) of the Act was issued. The Assessee filed objections against the said notice, finding merit in the objections, the AO after obtaining approval of Additional Commissioner of Income Tax, Central Range-iii, New Delhi, dropped the proceedings vide D&CR No. 10/37 dated 27.07.2007. Concomitantly, on the same date i.e. 27.07.2007, fresh block proceedings were again initiated against the assessee on account of the unaccounted

amount of Rs. 2,44,58,812/- paid by Vatika Group to the Assessee.

5. These proceedings were objected to by the Assessee on the ground that the period of limitation for completion of block assessment was two years from the end of the month in which notice under Chapter XIV-B was served on the other person, and that the subsequent notice dated 27.07.2007 issued under Section 158BD was without jurisdiction.

6. The objections of the Assessee on the issue of limitation were found to be incorrect by the AO were accordingly rejected and a notice under Section 142 (1) was issued on 22.06.2009. The Assessee filed its response thereto which was rejected by the Assessing Officer and undisclosed income was determined at Rs. 2,44,58,812/-.

7. Being aggrieved by the assessment order, the Assessee filed an appeal before CIT (A) which was allowed in favour of the Assessee. The same was challenged by the Revenue before ITAT. The Assessee also filed cross objections thereto. The ITAT rejected the appeal of the Revenue and held that the CIT(A) had given categorical finding giving detailed reasons that the addition is not sustainable and also because the initiation of proceedings without recording the note of satisfaction in the case of personal search, was bad in law and there was no need to interfere with such findings.

8. With respect to the cross objections filed by the Assessee, ITAT observed that the satisfaction recorded by the AO in the order sheet was not communicated to the Assessee is not a valid satisfaction and accordingly it was held that the mandate as per Section 158BD had not been fulfilled. The AO did not have a valid jurisdiction to frame the assessment and the cross

objections of the Assessee were allowed. The relevant portion of the order passed by the ITAT reads as under:-

> "Thus, the CIT(A)has given the categorical finding that the addition is not sustainable due to the detailed reasons given by the CIT(A). Further, the initiation of proceedings without recording any note of satisfaction in the case of person searched, the proceedings initiated itself is bad in law as held by the Apex Court in the case of Manish Maheshwari vs. ACIT289 ITR 341 and in the case of CIT vs. Calcutta Knitwears, 362 ITR 673. Therefore, there is no need to interfere with the findings of the CIT(A).Thus, appeal filed by the Revenue is dismissed.
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> 9. Regarding the Cross-Objection filed by the assessee, the Ld. AR contended that the CIT(A)failed to appreciate the fact that since no order dropping the proceedings initiated u/ s 158BD of the Act dated 14/7 /2005 was ever been served on the assessee. Therefore, subsequent notice issued u/ s158BD of the Act dated 27/7/2007 was not a valid notice and hence the impugned order of assessment dated 30/07/2009 was without jurisdiction.
> The Ld. AR further contended that the findings of the Assessing Officer that mere fact that the decision to drop the proceedings is not communicated to the assessee cannot be integrated as evidence of the fact that proceedings were barred by limitation that remain pending till the date of limitation as misconceived and erroneous conclusion. In fact, once it is not disputed that no order dropping proceedings had been communicated to the assessee, it ought to have been held that notice issued u/s 158BD of the Act dated22/7/2007 was without jurisdiction held by Hon'ble Apex Court inc case of Trustees HHH, the Nizam Supplemental Family Trust Vs. CIT 242 ITR 381 and the decision of Hon'ble Delhi High Court in case of CIT Vs. KLM Royal Touch Airlines Vs. CIT 292 ITR 49. The Ld. AR contended that notice u/s 15880 of the Act was without jurisdiction since, the notice u/s 158BD dated 27/7/2007did not record any satisfaction as has been held by the Honble Delhi High Court in case of New Delhi Auto Finance Pvt. Ltd. Vs. JCIT 300 ITR 83following the judgment of the Hon'ble Apex

Court in case of CIT Vs. Mahesh Maheshwari 289 ITR 341. The Ld. AR further contended that satisfaction recorded by the Assessing Officer on the order sheet and not in the notice is not valid satisfaction since satisfaction u/s 158BD of the Act has to be recorded by the Assessing Officer of the search person and not the Assessing Officer of the assessee and, therefore, such purported satisfaction as has been recorded in the order sheet and not communicated to the assessee is not a valid satisfaction. And, therefore, does not confer valid jurisdiction to frame the impugned assessment."

9. Mr. Ruchir Bhatia, Senior Standing Counsel for the Revenue, during the course of arguments, has urged that ITAT has erred in relying upon the decision of ***Manish Maheshwari v. Assistant Commissioner of Income Tax [2007] 159 Taxman 258 (SC)*** and that the Assessing Officer had, in fact, recorded the satisfaction as required and the findings of the ITAT are erroneous.

10. Before adverting to the question of jurisdiction, we have examined the merits of the case. The documents on the basis of which the undisclosed income of the Assessee has been added, have also been a subject matter of assessment proceedings in the case of M/s Baani Technology Pvt. Ltd (presently known as Vatika Landmark Projects Pvt. Ltd.), wherein, an addition was made of Rs. 2,59,55,460/- on identical basis, holding that the said Company had purchased the land for a net consideration of Rs. 4,95,61,000/- on the basis of documents found from the premises of Shri Anupam Nagalia. However, in the appeal proceedings, the CIT (A) deleted the addition. The said order was also confirmed by the Tribunal. The relevant portion of the orders of the CIT (A) and the Tribunal have been

extracted in the order dated 30.11.2010 passed in Appeal No. 54/09-10 pertaining to the Respondent Assessee and the same read as under:

> "It was held by the learned **Commissioner of Income Tax (Appeals)** in the said order as under:
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> "9.30 I have considered the reasoning given by the Assessing Officer and submissions made by the Ld. Counsel. I have also carefully seen the copies of the seized documents filed by the appellant in the paper book. Before the issue is decided it is pertinent to mention that appellant company earlier had name of M/s Banni Technologies Pvt. Ltd. At the time this company was controlled by Shri Virender Bhatia and his family members. A search in Virender Bhatia group u/s 132(1) of the IT Act conducted on 20.3.2002. In the said search, the appellant company was also covered. In the assessment u/s 158BC of the M/s Banni Technologies Pvt. Ltd. The Assessing Officer made addition of Rs.1,49,62,500/- u/s 158BC on account of under statement in purchase price of 2.36 Acres land in Wazirabad, Gurgaon. In that order, the Assessing Officer concluded that actual purchase consideration was Rs.3, 07,12,496/- against the amount is recorded in books of accounts of Rs. 1,57,50,000/-. Accordingly, addition of Rs.1,49,62,500/- was made. This addition made by DCIT, Central Circle-20, New Delhi was deleted by Ld. CIT(A)-XVIII, New Delhi vide his order dated 26.12.2005 in appeal NO.2/05-06. The main reason for deleting the addition by Ld. CIT(A) was that no incriminating document was found during the course of search and seizure action and the addition was made on the basis of statements of the broker and farmers who sold their land to M/s Banni Technologies Pvt. Ltd. Clearly the addition made in this assessment is also in respect of same piece of land of 2.36 acres at Wazirabad, Gurgaon. The addition has been made by the Assessing Officer holding that the appellant company purchased the land for consideration of Rs.4,95,61.000/- from M?s Baani Technologies Pvt. Ltd. controlled by Shri Virender Bhatia. It is an admitted fact that appellant, M/s Vatika Landmark (P) Ltd. is a new name

of M/s Banni Technologies Pvt. Ltd. This fact has been mentioned by the Assessing Officer in the assessment order under the head "Name of the assessee". Thus M/s Vatika Landmark (P) Ltd. (appellant) is same as M/s Banni Technologies (P) Ltd. except the change of name, I fail to understand as to how the appellant could purchase land from itself and pay money to itself. There is no evidence on record to suggest that the appellant company paid any un-accounted money to M/s Banni Technologies (P) Ltd. or Shri Virender Bhatia. As a matter of fact the Assessing Officer has strongly contended that the plea of the appellant that Shri Anupam Nagalia is not employee of the appellant and therefore documents seized from his residence cannot be used against the appellant has to be rejected. While making this contention the Assessing Officer has stated that Shri Anupam Nagalia is looking after the financial affairs of the appellant company. Even if it is presumed that Shri Anupam Nagalia is in fact looking after the financial affairs of Vatika Groups of Companies he could not be aware of the actual purchase consideration paid by the appellant company for purchase of 2.36 acres of land at Wazirabad, Gurgaon.This is so because at the time of purchase of 2.36 acres of land the appellant was not in control of Vatika Group. A perusal of the documents found from the residence of Shri Anupam Nagalia and seized as per annexure A-9 clearly indicates that they are some calculations. No Definite conclusion can be drawn only if such conclusion is supported by the author of the document i.e. Shri Anupam Nagalia. The Assessing Officer has failed to record any statement of Shri Anupam Nagalia page No.5 of the assessment order refers to an statement of Shri Anupam Nagalia and in this statement Shri Anupam Nagalia has clearly stated that page No.6 of annexure A-9 is a rough working done to arrive at a decision whether at all there is viability in the project. It was further stated that figures stated are rough and hypothetical. In view of this statement and the nature of documents I am an agreement with the submission of the appellant that these documents are dumb and are incapable of ay interpretation. The Assessing Officer has merely done some calculations and has

arrived at a conclusion that there was undisclosed investment of Rs. 2,58,55,460/-. Other documents being share purchase agreement and letter to Director, Town & Country Planning, Chandigarh, Haryana also do not indicate towards any unexplained investments in purchase of land. In view of these facts, I am of the opinion that the Assessing Officer was not justified in making additions of Rs. 2,59,55,460/-. The same is deleted."

The above order stands confirmed by the **Hon'ble Tribunal by order dated 25.09.2009** by holding as under:

"8. We have heard the rival submissions and have gone through the material available on record. We find that on page no. 10 of the assessment order, it is seen that the Assessing Officer has made addition on the basis that originally, the property in question was purchased by the assessee at a cost of Rs.3.07 crores at the rate of Rs. 1.30 crores per acre in January, 2001 and thereafter Vatika Group headed by Shri Anil Bhalla purchased this land in November 2002. The Assessing Officer has also observed that the property rates have increased manifold during the period January, 2001 to November, 2002 ad on this basis, he has justified the consideration of cost of property at Rs. 495.61lakhs. In this background, we find that when the property in question was purchased by the assessee in January, 2001, there cannot be any addition on the basis of property, rates in November, 2002 when it is said that the property in question was sold by the assessee company to Vatika Group headed by Shri Anil Bhalla. Regarding purchase consideration at the time of purchase in January, 2001, we find that it is dated by the learned CIT(A) in para no. 9.30 of his order as reproduced above that there was search in Varinder Bhatia group conducted on 20.03.2002 in which the assessee under its former name of M/s Banni Technologies Pvt. Ltd. was covered and the Assessing Officer made addition of Rs. 1,49,62,500/- on account of under statement in purchase price of Rs. 2.36 acres of land on the basis that actual purchase consideration was Rs. 3,07,12,496/- as against the amount of Rs.157.50 lakhs recorded in the book. That addition has been

deleted by learned CIT(A) by way of his order dated 26.12.2005. A clear finding is given by learned CIT(A) that the land in question in the present case is the same land of2.36 acres land in Wazirabad, Gurgaon, In view of this fact, no addition can be made on the basis of its value in November, 2002.This is not the case of the Assessing Officer that the property in question was sold by the assessee company in the present year for a sale consideration of Rs. 495.61 lakhs and the assessee accounted for lesser amount of sale consideration. The Assessing Officer is making addition on the basis that the assessee has purchased land for a consideration of Rs. 495.61 lakhs but has declared lesser amount of purchase value. This value of Rs. 495.61 lakhs is being justified by the Assessing Officer on the basis that the value of this land was Rs. 3.07 crores in January, 2001 to November, 2002 its value of Rs. 495.61 lakhs in November,2002 is very much reasonable and justified. This addition made by the Assessing Officer shows that as per him Rs. 495.61 lakhs is the value of land in question in November, 2002 but the same was purchased by the assessee in January, 2001 and hence we are of the considered opinion that no addition can be made in the present case on the basis that purchase consideration was under accounted for by the assessee considering all these facts, we find no good reason to interfere in the order of learned CIT (A) on this issue. We therefore, uphold the same.

9. In the result, the appeal filed by the revenue is dismissed.""

11. In the present case, the CIT (A), relying upon the aforesaid orders, deleted the addition of Rs. 2,44,58,812/-. The ITAT also confirmed the order of CIT(A) and upheld the findings of CIT(A) on merits and also decided the plea of jurisdiction in favour of the assessee.

12. We have considered the submissions advanced by Mr. Ruchir Bhatia, Senior Standing Counsel for the Revenue, however, we are not inclined to

entertain the present appeal in view of the concurrent finding of fact arrived at by CIT(A) and the ITAT. The deletion of the additions arising from same set of facts and documents has been confirmed by ITAT in the order dated 25.09.2009 in the case M/s Baani Technology Pvt. Ltd (presently known as Vatika Landmark Projects Pvt. Ltd.). The concurrent findings of fact by CIT (A) and ITAT, in the present case, do not give rise to any substantial question of law and we are therefore not inclined to entertain the present appeal. However, at the same time, we make it clear that we have not examined the grounds urged by the Petitioner relating to the plea of jurisdiction and this question is left open.

13. In the above terms, the present appeal is dismissed.

SANJEEV NARULA, J

VIPIN SANGHI, J

NOVEMBER 01, 2019
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