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

**%  Date of Decision** : 6th March, 2012.

\+  ITA 145/2012

CIT ..... Appellant
Through Mr. Abhishek Maratha, sr. standing counsel with Ms. Anshul Sharma, Adv.

versus

ARENS DEVELOPERS & ENGG ..... Respondent
Through

**CORAM:**
**HON'BLE MR. JUSTICE SANJIV KHANNA**
**HON'BLE MR. JUSTICE R.V. EASWAR**

**SANJIV KHANNA,J: (ORAL)**

1. This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961( 'Act', for short) impugns the order dated 21.04.2011 passed by the Income Tax Appellate Tribunal ('Tribunal', for short) in the case of Arens Developers and Engineers Ltd., the assessee. This appeal relates to the assessment year 2002-

03.

2. Only one contention has been raised before us by the Revenue. Ld. senior standing counsel for the Revenue submits that the Assessing Officer was justified in making additions on the ground of understatement of sale consideration and computing the same by capitalizing the annual rent. He submits that the method adopted by the Assessing Officer was justified and in support of his submission has relied upon the decision of Madras High Court in ***Rane (Madras) Ltd. Vs. CIT*** (2003) 259 ITR 307.

3. The CIT(Appeals) deleted the said addition of Rs.3,52,66,096/- after referring to the factual matrix. Search operations were conducted during the relevant year but no incriminating material/ document regarding understatement sale transaction was found. The documents/ material did not indicate that the properties were sold for higher consideration, than the amount mentioned in the agreements. The parties to whom the properties were sold had affirmed the said transaction and the consideration paid. The CIT(Appeals) held that

the rent capitalization method is not a proper method for determining the deemed sale consideration for the properties as there was no material to show that there was understatement and thus rent capitalization method cannot be the basis to hold and compute the alleged understatement of the sale consideration.

4. The aforesaid findings recorded by the CIT(Appeals) have been affirmed by the Tribunal, who have stated as under :

> "12. We have hard (sic.) both the parties and gone through the material available on record. The Assessing Officer had estimated the value of the property based on rent capitalization method which is applicable to wealth tax proceedings. During the course of search no mater[al (sic.) was found to suggest that properties were sold at higher price than the price mentioned in sale deeds. The Assessing Officer had proceeded to value the property on rent capitalization method merely on assumption and surmises. No material has been brought on record to justify that the sale value was lower than the actual price for which the properties were sold. In the absence of any material on record to establish that the sale consideration of the properties was more than the recorded value, in our considered opinion, Assessing Officer was not justified in estimating the sale consideration on the basis of rent capitalization method. Accordingly, we do not

find any infirmity in the order of Ld. CIT (A) deleting the addition."

5. The reasoning and findings recorded by the CIT (Appeals) and the tribunal, we do not merit interference. The decision of the Madras High Court relied upon by the assessee in the case of Rane (Madras) Ltd. (supra) is in a different background and not apposite. In that case, fair market value of the property as on 01.01.1964 had to be estimated/ calculated for the purpose of Section 55 A of the Act. The assessee had submitted a report of a registered valuer. The Assessing Officer, estimated fair market value of the property as on 1.1.1964 by adopting the rent capitalization method as provided in Schedule III to the Wealth Tax Act, 1957. The value as on 01.01.1964 had to be estimated and the High Court for the reasons stated, accepted the valuation method applied by the Assessing Officer. This is different from stating that understatement of sale consideration without any other evidence/material can be assumed, measured and computed by applying rent capitalization method. In a

given case, the said contention/ method may go against the Revenue and lead to evasion of tax.

6. In the present case, the assessee has sold properties. The statement of the parties to whom the properties were sold have been recorded. All of them have confirmed the sale consideration mentioned in the sale document/agreement. In the search no incriminating material or evidence to show and establish understatement of sale consideration was found. The observations of the Assessing Officer for adopting the rent capitalization method, in the assessment order read: -

> "**Suppression of Sale Consideration**
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> During the course of assessment proceedings, it was noted that the assessee suppressed sale consideration on sale of immovable properties. The assessee takes advantage of the fact that in such sale considerations, the buyer also affirms the consideration because the buyer is also a beneficiary as far as evasion of income tax is concerned. In such situation, it is very difficult for the department to establish that the sale consideration has been suppressed. This fact however, does not need any confirmation as far as reality is concerned."

Therefore, the Assessing Officer held: -

> "The perusal of details submitted by the assessee company, indicate that sale consideration shown by the assessee company is absurd when compared with the rentals, these properties were fetching. The transactions have taken place in the F.Y. 2001-02 when the return on capital at the maximum, is estimated between 10-12% per annum. Even if the assessee is considered to have entered into a bad deal, return on capital for the buyer should not be more than 20% per annum by any stretch of imagination. It is important to mention here that the properties are brand new construction and given on rent to reputed companies.
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> The assessee was asked to explain how the sale consideration is justified when compared with the rent, which the sold property, was fetching. The explanation given by the assessee has been considered. I am not able to understand the claim of the assessee from any parameter. The claim of the assessee is primarily based on the argument that its sale considerations are supported by sale deed/ other agreements etc. The assessee can not be allowed to take advantage of this situation because the transactions are prima facie absurd and most definitely qualify to be "mutually-beneficial-collusive transactions". In these circumstances and considering the absurdities, claimed by the assessee in its books of account, I do not find that the books of accounts in any manner, indicate real state of affairs. Sale consideration on the rented properties is estimated at the max to give 15% return to the buyer."

7. The aforesaid observations indicate that the Assessing Officer failed to conduct a detailed enquiry and verification, which may have justified their stand regarding understatement or non-declaration of the actual sale consideration. The Assessing Officer should have collected the necessary material/evidence with reference to other sale instances in the same building or in adjacent/similar buildings. The Assessing Officer did not consider and collect evidence on the rate of rent and capital value of the building in the area. The Assessing Officer did not undertake the said exercise. He expressed his inability to verify and by applying the rent capitalization method, he held and concluded that the sale consideration was understated, if we take the rate of return as 15% to the buyer. This is only an assumption and cannot be accepted. The aforesaid observation does not mean that in no case, the Assessing Officer can rely upon rent capitalization method but there should be a justification and material to hold, show and establish that there was an understatement of the

sale consideration. Once it is shown that consideration has been understated, it may be open to the Assessing Officer to quantify the same by reference to the market value arrived at by the rent capitalization method in the absence of any material to show the precise extent of understatement. (See the observations of the Supreme Court in ***K. P. Varghese v. ITO***, (1981) 131 ITR 597 @ 616).

In view of the failure of the Assessing Officer to conduct the necessary enquiries at the assessment stage and the factual findings recorded by the CIT(Appeals), which have been affirmed by the tribunal, we do not find any substantial question of law arises and the appeal is dismissed. No costs.

**SANJIV KHANNA, J.**

**R.V.EASWAR, J.**

**March 06, 2012**
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