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

Date of Decision : 23rd November, 2021

\+ **ITA 227/2020**

PRINCIPAL COMMISSIONER OF INCOME TAX-15
..... Appellant

Through: Mr.Puneet Rai, Sr. Standing Counsel with Ms.Adeeba Mujahid, Jr. Standing Counsel.

versus

SHAILJA PASRICHA ..... Respondent

Through: Mr.Salil Aggarwal, Sr. Adv. with Mr.Madhur Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This appeal has been filed challenging the order dated 16.07.2019 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G', New Delhi (hereinafter referred to as 'ITAT') in ITA No.3518/DEL/2016 dismissing the appeal filed by the appellant herein.

2. The questions of law proposed in the appeal are as under:-

> *"3.1. WHETHER in the facts and circumstances of the case, Hon'ble ITAT erred in holding that it is for the parties to settle the sale consideration for transfer of respective shares in the*

property while the Hon'ble ITAT failed to note that the parties were closely related and there was no proper basis for settlement of sale consideration between them and it was done with a view to evade payment of tax?

3.2 WHETHER in the facts and circumstances of the case, Hon'ble ITAT erred in upholding Ld CIT(A) order based on additional evidence without complying with the provisions of Rule 46A of Income Tax Rules, 1962 and thus failed to follow the law laid down by this Hon'ble Court in CIT v. Manish Buildwell (P) Ltd. ?

3. It is submitted by the learned counsel for the appellant that plot No. 69/4A, Main Najafgarh Road, Industrial Area, New Delhi admeasuring around 5777 square yards was under the ownership of late Shri Jeewan Lal Virmani by virtue of a Sale Deed dated 17.10.1969 executed by the Delhi Development Authority in his favour. The late Shri Virmani had executed a Lease Deed dated 01.02.1975 in favour of M/s ESS ESS Metals and Electricals, a sole proprietorship of Shri Banarsi Lal Pasricha, granting the said land on lease to him for 99 years. Shri Banarsi Lal Pasricha is the father-in-law of the respondent herein.

4. On the death of Shri Jeewan Lal Virmani, his three legal heirs, by way of Sale Deeds dated 13.06.1977, 26.04.2007 and 19.10.2010 transferred their respective one-third undivided share in the land in favour of the respondent herein.

5. Out of the total land of 5777 sq. meters, 700 sq. meters was acquired leaving a balance of 5077 sq. meters.

6. By a Sale Deed dated 10.02.2012, the respondent alongwith M/s ESS ESS Metals and Electricals transferred the said land in favour of M/s HH Buildtech Private Ltd. for a total consideration of Rs. 35 Crores (Rupees Thirty Five Crores) out of which Rs. 18 Crores (Rupees Eighteen Crores) was received by the respondent, while the balance of Rs. 17 Crores (Rupees Seventeen Crores) was received by M/s ESS ESS Metals and Electricals.

7. The Assessing Officer, by the Assessment Order dated 31.03.2015, held that the respondent had the sole ownership right over the plot of land and therefore, should have received the minimum amount of sale consideration at the Circle Rate of Rs. 27,60,03,387/- (Rupees Twenty Seven Crores Sixty Lakhs Three Thousand Three Hundred and Eighty Seven Only). The Assessing Officer, therefore, added an amount of Rs. 9,60,03,387/- (Rupees Nine Crores Sixty Lakhs Three Thousand Three Hundred Eighty Seven Only) to the income of the respondent under Section 50C of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

8. The Assessment Order was challenged in appeal by the respondent, being Appeal No. 91/15-16. The same was allowed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)') vide his order dated 10.03.2016, holding that as the sale consideration was admittedly Rs. 35 Crores, which is above the Circle Rate, Section 50C of the Act has been wrongly invoked by the

Assessing Officer. It was further held that the Assessing Officer cannot decide the amount that should have been paid by the vendee to the title holder of the land, that is, the respondent herein, and/or to the lessee of the land, that is, M/s ESS ESS Metals and Electricals, for possession of the land.

9. Aggrieved of the above order, the appellant preferred an appeal before the ITAT being ITA No. 3518/Del/2016, which has been dismissed by the Impugned Order observing as under:-

> *"8. We have gone through the record. There is no dispute as to Jeewan Lal Virmani during the land in dispute to M/s ESS ESS Metals and Electricals on lease for 99 years in the year 1975, and subsequent to the death of Jeewan Lal Virmani, his children selling the same to the assessee under three sale deeds on different dates. The sale consideration paid by the assessee is also not in dispute. As on the date of sale of the said land in favour of M/s HH Buildtech Private Limited, according to the learned Assessing Officer, the circle rate was Rs.27.60· crores whereas the sale consideration according to the sale deed was Rs.35 crores, which is much higher than the circle rate.*
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> *9. Sale deed dated 10.02.2012 of this land in favour of M/s HH Buildtech Private Limited clearly shows that both the assessee and M/s ESS ESS Metals and Electricals were the vendors of their respective rights in the land and the recitals of the sale deed are clear in stating that out of the sale consideration of Rs.35 crores assessee had to receive Rs.18 crores and M/s ESS ESS Metals and Electricals had to receive Rs.17 crores.*
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> *10. In the circumstances, the admitted facts prove that in respect of the land that was sold in favour of M/s HH Buildtech Private Limited both the assessee and M/s ESS ESS Metals and Electricals have rights in different capacities. M/s ESS ESS Metals and Electricals held the leasehold rights for 99 years and since the lease was in the year 1975 and the assessee purchased the property between*

1997 and 2010, the rights acquired by the assessee must be understood to be subject to the leasehold rights. It is, therefore, clear that the Assessing Officer was in clear error in holding that the assessee had become the sole owner of the property, which is factually and legally incorrect. Assessee was not the absolute owner of the property and her rights were subject to the leasehold rights held for 99 years by M/s ESS ESS Metals and Electricals. In such situation, it is for the parties to settle the sale consideration for transfer of respective properties held by the assessee and M/s ESS ESS Metals and Electricals. Revenue authorities have no say to dictate the terms of sale consideration to be received in exchange of rights of the parties.

11. It is not for the Assessing Officer to say that de hors the leasehold rights held by M/s ESS ESS Metals and Electricals for 99 years, the assessee had to receive the entire sale consideration to the exclusion of M/s ESS ESS Metals and Electricals or that the consideration paid to M/s ESS ESS Metals and Electricals was excessive. It is open for the Revenue to verify whether the sale consideration said to have been received by M/s ESS ESS Metals and Electricals was offered to tax or not in the scrutiny of the return of income of M/s ESS ESS Metals and Electricals. It is not open for the Revenue to contend that to the exclusion of M/s ESS ESS Metals and Electricals, assessee alone must receive the entire sale consideration ignoring the leasehold rights held by M/s ESS ESS Metals and Electricals for 99 years in respect of the very same property which was the subject matter of the sale.

12. In this perspective of the matter, we are of the considered opinion that the Ld. CIT(A) had reached a right conclusion on proper appreciation of the facts available on the record and the reasoning or conclusion of the Ld. CIT(A) in the impugned order is beyond the pale of challenge by the Revenue. We, therefore, decline to interfere with the impugned order."

10. The learned counsel for the appellant submits that in terms of Section 48 of the Act the entire sale consideration should have been disclosed as income by the respondent and thereafter, the amount paid to M/s ESS ESS Metals and Electricals could have been claimed as a deduction. She further casts a doubt on the bifurcation of the amount between the respondent and M/s ESS ESS Metals and Electricals, submitting that the respondent is the daughter-in-law of the sole proprietor of M/s ESS ESS Metals and Electricals, that is, Mr. Banarsi Lal Pasricha.

11. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

12. As observed hereinabove, the Assessing Officer had in fact invoked Section 50C of the Act claiming that the sale consideration of Rs. 18 Crores received by the respondent was below the Circle Rate. This was clearly ignoring the fact that the sale consideration was in fact Rs. 35 Crores. The CIT(A) and the ITAT have given concurrent findings on the above. It is also not denied that M/s ESS ESS Metals and Electricals held a lease for 99 years with respect to the land and the vendee has paid consideration of Rs. 17 Crores for cancellation of the said lease. In the present case, the vendor did not have an unencumbered right over the land and M/s ESS ESS Metals and Electricals admittedly had a perpetual leasehold right over the land, which right was also extinguished under the Sale Deed.

13. The bifurcation of the sale consideration was not challenged by the Assessing Officer. In fact, the Assessing Officer took Rs. 18 crores

received by the respondent as the Sale Consideration. This was clearly erroneous as the Sale Consideration was Rs. 35 crores, however, was bifurcated between two right-holders over the land. The transaction being collusive was not the case of the Assessing Officer.

14. Keeping in view the concurrent findings of fact by the CIT(A) and the Tribunal, this Court is of the view that the said findings should not be lightly interfered with. In fact, the Supreme Court in the case of ***Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303*** has reiterated that under Section 100 of the Code of Civil Procedure, 1908, the jurisdiction of the High Court to interfere with the orders of the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court in ***State of Haryana & Ors. vs. Khalsa Motor Limited & Ors., (1990) 4 SCC 659*** has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in ***Hero Vinoth (Minor) vs. Seshammal, (2006) 5 SCC 545*** has also held that *"in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.*" It has also held that there is a difference between question of law and a '*substantial question of law*'.

15. No submissions have been made by the learned counsel for the appellant on the second question of law proposed in the appeal.

16. Consequently, this Court finds that there is no perversity in the findings of the CIT(A) and ITAT. Accordingly, the present appeal is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

NOVEMBER 23, 2021/*rv*/AB