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

+ **ITA 240/2023**

+ **ITA 241/2023**

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr Sanjay Kumar, Sr Standing
Counsel with Ms Easha Kadian and
Ms Hemlata Rawat, Advs.

versus

M/S AVANTHA REALTY LTD.

..... Respondent

Through: Mr Upvan Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **25.04.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.20273/2023 in ITA 240/2023

CM Appl.20275/2023 in ITA 241/2023

1. Allowed, subject to just exceptions.

CM Appl.20274/2023 in ITA 240/2023

CM Appl.20276/2023 in ITA 241/2023

2. These are the applications filed on behalf of the appellant/revenue seeking condonation of delay in filing the appeals.

3. Mr Upvan Gupta, who appears on behalf of the non-applicant/respondent/assessee, does not oppose the prayer made in the application.

4. The delay is condoned.

5. The applications are disposed of in the aforesaid terms.

ITA nos.240/2023 & 241/2023

1/3



ITA 240/2023

ITA 241/2023

6. These appeals concern Assessment Years (AYs) 2014-15 [ITA No.240/2023] and AY 2013-14 [ITA No.241/2023].

6.1 The appeals are directed against a common order dated 25.10.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. We have heard Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, and Mr Upvan Gupta, who appears on behalf of the respondent/assessee.

8. The following questions of law have been proposed by the appellant/revenue:

“A. Whether the Ld. ITAT has erred on facts and in law in considering the scheme of Arrangement and demerger between SILT and assessee company to be in the nature of transfer of property in the nature of house property referred to in Part C of Chapter IV of Income Tax Act, 1961, whereas as per the above mentioned scheme, the business undertaking in the form of real estate division of BILT was transferred with all the liabilities and obligations pertaining to employees of Janpath Investment & Holding Limited (Subsequently renames as M/s Avantha Realty Ltd)?

B. Whether the Ld. ITAT has erred on facts and in law in upholding the decision of CIT (A) for allowing that interest on unpaid amount to the seller is akin to interest on borrowed capital and the assessee is eligible for deduction u/s 24(b) of the Act?

C. Whether the Ld. ITAT has erred on facts and in law for considering case of Hon'ble High Court of Calcutta in the case of CIT vs. R.P Goenka & J.P Goenka for allowing the claim of assessee. However, the said cited case law does not support the claim of the assessee as in the cited case law the petitioner purchased house from Jaipur Investment Co. Ltd for a consideration of Rs.11,50,000/-. The petitioner borrowed Rs.3,50,000/- from Badridas Keshav Prasad, a firm of his family and paid part of the consideration. In the case of assessee no fund was borrowed for the acquisition of said property and interest was paid for the remaining consideration that was due on assessee for the acquisition of the said property?

D. Whether the Ld. ITAT has erred on facts and in law in restricting the

ITA nos.240/2023 & 241/2023

2/3



addition to Rs. 4,09,696/- as against Rs.16,39,121/- made by the AO on account of disallowance under Section 14A of the IT Act read with Rule SD of the Income Tax Rules.

E. Whether the Ld. ITAT has erred on facts and in law in holding that since the assessee has suo-moto disallowed expenditure to the extent of Rs. 18,55,74,389/- relating to earning of exempt income, further disallowance of expenses u/s 14A cannot be imported into while computing the book profit Ws 115JB of the Income Tax Act, 1961 ignoring the provisions contained in Explanation 1(f) to the section 115JB which provides that amount of expenditure relatable to dividend income has to be increased for the purpose of book profit?"

9. Even according to Mr Kumar, questions (A) to (C) relate to the same issue.
10. Therefore, question (B) would, if at all admitted for consideration, cover the remaining two questions.
11. Insofar as the proposed question (D) is concerned, it is not disputed, that the issue raised therein is covered against the appellant/revenue by a judgment of a coordinate bench of this Court rendered in ***Joint Investigations Private Limited vs. CIT*** (2015) 372 ITR 694 (Del.).
12. Therefore, for the moment, notice is issued *vis-a-vis* question no.(B) and (E).
13. Mr Upvan Gupta accepts notice on behalf of the respondent/assessee.
14. Counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.
15. List the matters on 05.10.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

APRIL 25, 2023/pmc
ITA nos.240/2023 & 241/2023

[Click here to check corrigendum, if any](#)
3/3