



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

+ **ITA No. 285/2011**

% **Date of Decision : 19th January,2012**

GADODIA ELECTRONICS PVT LTD Appellant
Through Ms. Shashi Kapila and Mr. Parvesh
Sharma, Adv.

versus

CIT Respondent
Through Mr. Kamal Sawhney, Adv.

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA,J: (ORAL)

1. Gadodia Electronics Pvt. Ltd. has filed the present appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the impugned order dated 25th August, 2010 passed by the Income Tax Appellate Tribunal (for short, 'the Tribunal') in ITA No. 746/Del/2010



pertaining to the assessment year 1994-95.

2. After hearing counsel for the parties, we frame the following substantial question of law:-

“Whether Income Tax Tribunal is right in holding that the Assessing Officer could have re-examined and re-computed the value of the sale consideration received by the appellant/assessee for transfer of property bearing Plot no. S-40, Sahibabad Industrial Area, Phase/Site No. 4, Ghaziabad?”

3. With the consent of the parties, we have heard the arguments and proceed to decide the appeal.

4. There have been several rounds of litigation and therefore, it is appropriate to state the facts in some detail. The assessee had sold the aforesaid property consisting of land and factory building for Rs. 17.50 lakhs during the assessment period 1994-95. As provisions of Chapter XXC of the Act were then applicable, the appellant had applied for permission and vide certificate dated 22nd March, 1994, permission for sale was granted by the appropriate authority under Section 269UL (3) of the Act. The appropriate authority did not find and hold that the sale consideration was understated.

5. The Assessing Officer vide assessment order dated 11th March, 1997, examined and computed income under the head ‘Capital Gains’. After computing the cost of acquisition and indexed cost, it was held that Rs. 16,52,400/- was taxable as long term capital gains. The Assessing Officer made certain other additions. The Assessing Officer did not allow



the appellant to carry forward the business losses.

6. The appellant filed an appeal against the additions made including the direction of the Assessing Officer that the assessee was not entitled to carry forward business losses. The appellant questioned the computation made by the Assessing Officer under the head 'Long term capital gains' on the ground that in respect of the depreciable assets, Section 50 of the Act should have been applied.

7. The CIT (Appeals) vide order dated 1st May, 1998, set aside the entire assessment and remitted the matter to the Assessing Officer for a fresh decision.

8. By order dated 29th September, 2000, the Assessing Officer passed the assessment order. He computed long term capital gains at Rs. 14,02,400/-. He also added an amount of Rs. 1,23,744/- under Section 41(1) in respect of depreciable assets which were sold. The Assessing Officer bifurcated the sale consideration of Rs. 17,50,000/-. Rs. 15,00,000/- was allocated as sale consideration received for land and Rs. 2,50,000/- was treated as the sale consideration received for the factory building which was a depreciable asset. The appellant/assessee had taken and computed the sale consideration of the land and building as Rs.5 lakhs and Rs.12.50 lakhs, respectively.

9. The CIT (Appeals) vide order dated 3rd December, 2001, upheld the order of the Assessing Officer and did not interfere with the same.

10. The assessee preferred an appeal before the Tribunal. Vide order dated 24th February, 2006, the Tribunal after examining the factual matrix



of the case, directed as under:-

“3.2 We have perused the records and considered the matter carefully. The only dispute raised is regarding allocation of sale value towards land and the factory building, as it was a case of composite sale. The assessee has allocated Rs.5 lacs towards the sale value of the land whereas the A.O. has estimated the same at Rs. 15 lacs and the balance amount has been taken as sale consideration for building. The estimates made by both the parties are not supported by any evidence. This is a technical matter which has to be resolved after obtaining opinion of a valuer who is a specialist in the matter. We, therefore, consider it appropriate to set aside the issue and restore the matter to the file of the A.O. for passing a fresh order after getting valuation report from the valuer and after allowing opportunity of being heard to the assessee. As the issue is open before the A.O., he will also examine and tax the gain from the sale of building, which is a depreciable asset under the correct provisions of law.”

11. The Assessing Officer thereafter passed an order dated 18th December, 2007 on the basis of the report submitted by the Departmental Valuation Officer. In his report, the Officer valued the land at Rs. 6,20,451/- and valued the building at Rs. 15,22,051/- . He, accordingly, computed the value of the land and building at Rs. 21,42,502/-. The Assessing Officer accepted the valuation report and computed the long term capital gain on the basis that the sale consideration received by the assessee was Rs. 21,42,502/- and not Rs. 17,50,000/-.



12. The Assessee preferred an appeal before the CIT (Appeals) who upheld the decision of the Assessing Officer enhancing the sale consideration from Rs. 17,50,000/- to Rs. 21,42,502/- on the basis of the valuation report given by the Departmental Valuation Officer. The impugned order confirms the said addition and the appeal of the appellant/assessee has been dismissed.

13. We have reproduced and perused the operative portion of the order dated 24th February, 2006 passed by the Tribunal i.e. para 3.2. On reading of the said operative portion, it is apparent that the question of bifurcation and apportionment of the sale consideration of Rs. 17,50,000/- between the land and factory building was referred back. To this extent, the report of the Departmental Valuation Officer was required. The Departmental Valuation Officer and the Assessing Officer was not required and permitted by the said order to go into the question and examine the total sale consideration as the appellant in the present case had applied under Chapter XXC and the appropriate authority had accepted the sale consideration mentioned by the appellant. The sale consideration and the quantum thereof was never in question or doubt. This was not the aspect which was to be re-examined. Thus, the enhancement made by the Assessing Officer by increasing the sale consideration from Rs. 17,50,000/- to Rs. 21,42,502/- was not justified and as per law.

14. We may also notice here that as per report of the Departmental Valuation Officer, the bifurcation and apportionment of the sale consideration towards the land and the factory building by the



appellant/assessee has been accepted.

15. In view of the above, the question of law mentioned above is answered in negative i.e. in favour of the appellant and against the respondent.

16. The appeal is allowed to the above extent. No costs.

SANJIV KHANNA, J

R.V.EASWAR, J

January 19, 2012
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