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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **INCOME TAX APPEAL NO. 339/2014**

Date of decision: 27th October, 2014

HOUSING & URBAN DEVELOPMENT CORPORATION
 LIMITED Appellant
 Through Mr. Gagan Kumar & Ms. Niyati
 Chanana, Advocates.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX
 Respondent
 Through Ms. Suruchi Aggarwal, Sr. Standing
 Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the parties, we frame the following substantial question of law:

“Whether Income Tax Appellate Tribunal was right in holding that in terms of minutes of meeting held on 7th September, 1995 administrative expenses of 1.5% had accrued in respect of residential quarters at Andrews Ganj and were taxable as income?”

2. With the consent of the parties and as a short issue arises for consideration, we have taken up the appeal for hearing and the same is disposed of by this judgment.

3. The appellant-assessee is a company and a Public Sector Undertaking. For the Assessment Year 2002-03, return of income of the



assessee declaring total income of Rs.111,25,85,609/- filed on 23rd Janua 2003 was taken up for scrutiny assessment. In the assessment order dated 19th March, 2004 several additions including addition of Rs.35,57,615/- on account of 1.5% overhead and administrative charges relating to Andrews Ganj project were made. The assessee had undertaken construction of the Andrews Ganj project awarded to them by the Government of India. The Assessing Officer relied upon the minutes of meeting held on 7th September, 1995, to hold that the assessee was entitled to overhead charges of 1.5% not only in respect of cost of construction of the community centre but also on the cost of construction of the residential flats. This, as noticed, resulted in the addition of Rs.35,57,615/-. The assessment order further records that in the books of accounts this amount had been reversed.

4. The Commissioner of Income Tax (Appeals) affirmed the finding that as per minutes of meeting held on 7th September, 1995 with Ministry of Urban Development, overhead administrative expenses were payable not only in respect of the community centre but in respect of residential quarters also.

5. The Income Tax Appellate Tribunal (Tribunal, for short) by the impugned order dated 20th December, 2013 has dismissed the appeal filed by the assessee, recording as under:-

“5. At the time of hearing before us, the learned counsel for the assessee reiterated the same argument as was raised before the Assessing Officer that the



overhead charges were not leviable on general pool accommodation. However, we find that the Assessing Officer has reproduced the relevant portion of the minutes from which it is evident that the assessee is entitled to overhead charges of one and half percent on the computed cost of the project. The computed cost of the project would include cost of the entire project including general pool accommodation. In view of the above, we do not find any justification to interfere with the orders of lower authorities in this regard. Accordingly, ground No.1 of the assessee's appeal is rejected.”

6. Along with the grounds of appeal, the appellant before us has filed copy of minutes of the meeting held on 7th September, 1995 and after making reference to the same has pointed out that the said minutes have been misread and misunderstood by the Assessing Officer and the appellate authorities, including the Tribunal. The said minutes specifically make reference to the community centre complex at Andrews Ganj, New Delhi as is clear from the very first paragraph. The subsequent paragraphs, including the paragraph quoted by the Assessing Officer entailing payment of administrative expenses @ 1.5% relate to the development of community centre complex at Andrews Ganj, New Delhi and not to residential quarters which was not the subject matter of the said meeting and the recorded memorandum.

7. Having read the said record of minutes of meeting, we felt that there was merit in the submission made as the recorded minutes specifically refer to the position with reference to development of community centre



complex at Andrews Ganj, New Delhi and not to the residential quart under construction at Andrews Ganj.

8. In light of the aforesaid submissions and noting the minutes of the meeting, while issuing notice on 11th July, 2014, we had asked the counsel for the Revenue to verify the factual position and inform the Court whether the assessee had at any time received administrative expenses @ 1.5% in relation to the residential quarters from the Government of India. We had also recorded the submission of the assessee that the assessee never received 1.5% as administrative expenses for construction of the residential quarters.

9. During the hearing today, learned counsel for the respondent-Revenue has filed before us a letter dated 25th September, 2014 of the Assessing Officer, accepting and admitting that on verification it has been ascertained that overhead charges were leviable by the assessee only in respect of Andrews Ganj community centre and not on the development of residential flats at the Andrews Ganj project. The said letter has been kept on record.

10. Normally, we would have remanded the case to the Tribunal for fresh decision in the light of the minutes of meeting held on 7th September, 1995, but in view of the facts now elucidated and accepted by the Revenue, we are not inclined to pass an order of remit. It would be a formality. It is an accepted position that the appellant-assessee had never received 1.5%



administrative expenses in respect of the residential quarters in Andre Ganj project. Clearly, therefore, the stand of the appellant-assessee that the notes of the meeting held on 7th September, 1995 related to the development of community centre complex at Andrews Ganj, New Delhi and not to residential quarters is correct. The aforesaid document has been misread. There was no accrual of income in case the Government of India had not agreed to pay any overhead expenses or administrative charges @ 1.5% in respect of residential quarters at Andrews Ganj Complex, New Delhi.

11. The question of law is accordingly answered in favour of the appellant-assessee and against the Revenue. Addition of Rs. 35,57,615/- is deleted. The appeal is disposed of. In the facts of the case, there is no order as to costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

**OCTOBER 27, 2014
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