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

+ ITA 492/2024 & CM APPL. 53428/2024 (30 days delay in filing the appeal) and CM APPL. 53429/2024 (210 days delay in refilling the appeal)

PR. COMMISSIONER OF

INCOME TAX-12, DELHI

.....Appellant

Through: Mr. Sanjay Kumar and Ms. Easha Kadian, Advocates.

versus

MR. GUN NIDHI DALMIA

.....Respondent

Through: Mr. Mayank Nagi, Advocate.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

12.09.2024

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1. We take note of the following conclusions which have come to be rendered by the Assessing Officer [‘AO’]:-

“The above arguments and letter filed by Sh. Dalmia were examined carefully It is interesting to mention here that it took almost a year to Sh. G.N. Dalmia to realize that the cheque was issued by EKL and not by DLF. Surprisingly, the same also not came to the knowledge of the management of DLF and EKL. It is strange to note that letter dated 29.3.2006 of Sh. Dalmia was received by DLF Limited on 05.05.2006 and replied back by DLF Limited only on 25.5.2006, it is pertinent to mention here that the books of accounts of EKL for the FY 2005-06 relevant to AY 2006-07 were audited by Walker Chandiook & Co. New Delhi on 24.4.2006- The question remains why the payment of more than Rs. 7 crores by EKL to Sh. Dalmia did not come to the notice of the auditors, if the version of Sh. Dalmia is correct. Thus, the theory put forth on this account is nothing but a concocted one and cannot be relied upon as it is without any basis. Further, as apparent



from the above copy of account of Sh.G.N. Dalmia, it is crystal clear that a sum of Rs. 7,07,92,500/- was paid to him on 18.6.2005 as an advance for purchase of land and not for purchase of equity shares of EKL. It would be worthwhile to mention here that as per the Escrow agreement, cheques payable to different persons (shareholders) of the Dalmia family were deposited with the Escrow agent (HSBC) and there were only two cheques bearing nos. 506954 dated 04.05.2005 for Rs. 269,79,85,694/- and 506961 dated 04.05.2005 for Rs. 8,96,94,042/- in favour of Sh. GN Dalmia.

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The Chairman informed the Board that as per an earlier arrangement Mr. Gun Nidhi Dalmia has to receive 7% of the earning which the company will earn from any new project. As no new project has been undertaken by the company till date Mr. Gun Nidhi Dalmia has shown his desire to give away this entitlement. Mr. Gun Nidhi Dalmia informed the Board that he would never claim any such entitlement from the company and requested to cancel the agreement. The matter was discussed by the Board and the following resolution was passed to this effect :-

"Resolved that the arrangement between Mr Gun Nidhi Dalmia and the company regarding entitlement of 7% of earning sharing with the company be and is hereby revoked on the request of Mr. Gun Nidhi Dalmia."

Thus, as per Board Resolution dated 30.5.2005, earlier resolution passed by the Board of EKL about payment of 7.5% of the sale consideration of land as special consideration to Sh. G.N. Dalmia was cancelled and in the minutes there was no mention of payment of Rs. 7.20 crores to Sh. G.N.Dalmia which is quite strange and surprising. It would not be out of place to mention here that a cheque of Rs. 7,07,92,500/- was paid to Sh. Dalmia on 18.6.2005, whereas the DLF Limited took over the management of EKL on 30.5.2005 only.

Therefore, in view of the above discussion, it could be seen that the payment of Rs. 7.20 crores made by the DLF Limited to Sh. G.N. Dalmia was not at all related to the sale of the equity shares of EKL and must be for some other purpose and thus Rs. 7.20 cr., could not be allowed to form a part of sale consideration of equity shares of EKL and it should be treated as his income from other sources."

2. The Income Tax Appellate Tribunal [**'Tribunal'**], however, while affirming the view taken by the Commissioner of Income Tax (Appeals) [**'CIT(A)'**] in respect of the consideration of INR 7.20



crores has observed as follows: -

“12. In our view, the basic reason for which the extra payment made to the assessee does not find place in the Escrow Agreement is due to the fact that in addition to the assessee, there are other share holders, who are party to the Escrow Agreement. Therefore, the excess payment made to the assessee could not have formed part of the Escrow Agreement. However, undeniably, the assessee was holding the controlling block of shares of EKPL. Further, the allegation of the Assessing Officer that an amount of Rs. 7 crores was initially received towards advance for sale of land is totally unfounded as the Board Resolution referred to by him was never implemented since the land was never sold by EKPL. When documentary evidences indicate that both the vendor and the vendee, i.e., the assessee and DLF Ltd. have treated the payment of Rs.7.20 crores as control premium on sale of shares, there is no occasion for the Assessing Officer to rewrite the terms of agreement between the parties unilaterally. Moreover, the Assessing Officer has observed that the amount of Rs.7.20 crores was paid to the assessee for some other purpose. The aforesaid observation of the Assessing Officer clearly indicates that he himself was not sure for what purpose the payment was made. Thus, when the Assessing Officer had no other material in his possession to disprove the claim of the assessee that the amount was received towards sale consideration of shares, he could not have disallowed the claim on conjectures and surmises. Further, learned counsel has brought to our judicial precedents, wherein, it has been held that controlling interest is an incidence in share holding, hence, the consideration received is required to be considered for the purpose of computing capital gain. In this context, we refer to the following decisions:

1. *Venkaresh Vs. CIT, reported in 243 ITR 367 (Mad.)*
2. *Smt. Maharani Ushadevi Vs. CIT, reported in 131 ITR 445 (MP)*”

3. Since Mr. Nagi, learned counsel has entered appearance on behalf of the respondent-assessee, let this appeal be called again for consideration on 04.10.2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 12, 2024/vp