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

+ **ITA 50/2023 and CM APPL. 3668/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr Zoheb Hossain, Sr. Standing
Counsel with Mr Vipul Agarwal, Jr.
Standing Counsel.

versus

M/S SANSKAR HOMES PVT. LTD.,

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

25.01.2023

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

1. This appeal concerns Assessment Year (AY) 2010-11.
2. The short issue which arises for consideration, even according to Mr Zoheb Hossain, who appears on behalf of the appellant/revenue, is: whether Rs.7,73,74,500/-, paid in cash by the respondent/assessee towards purchase of immovable properties described as D-95, Anand Niketan, New Delhi [hereafter referred to as, "Anand Niketan property"] and F-60, Poorvi Marg, Vasant Vihar, New Delhi (first and second floor) [hereafter referred to as, "Vasant Vihar property"] can be disallowed under Section 40A(3) of the Income Tax Act,1961 [in short, "the Act"]?
3. According to Mr Hossain, in assessment order dated 26.03.2013 (a hard copy of which has been placed before us), the rationale which has been employed by the AO is, since the intention of the respondent/assessee, from

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the very beginning, was to treat the aforementioned immovable properties as stock-in-trade, expenditure incurred *qua* the same could be disallowed under Section 40A(3) of the Act.

4. The Income Tax Appellate Tribunal [in short, “Tribunal”] *via* the impugned order dated 07.03.2019, has *inter alia*, held, by adverting to the Vasant Vihar property, that the intention of the respondent/assessee was always to hold the same as investment.

5. The record also seems to suggest that the respondent/assessee held the Vasant Vihar property as an investment, since it appeared in Schedule G appended to the balance sheet ending on 31.03.2009.

5.1. *Inter alia*, the Tribunal also observed that the said balance sheet could not have been doctored, as the search in this case was conducted on 07.08.2010, which was after the date when the balance sheet was prepared i.e., 10.07.2009.

6. Besides this, it appears that Vasant Vihar property was sold in AY 2011-12 and AY 2013-14, and the proceeds received from the sale were offered for tax as short term capital gains.

7. Mr Hossain says that, inadvertently, the correct assessment order has not been placed on record. As noted above, we have been shown a hard copy of the assessment order dated 26.03.2013.

7.1. Mr Hossain will place the same on record.

8. Mr Hossain will also return with instructions as to what was the final outcome of the appeals filed by the respondent/assessee concerning the AY 2011-12 and AY 2013-14.



9. List the appeal on 27.02.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 25, 2023 / tr

Click here to check corrigendum, if any

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