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

+ ITA 865/2010

COMMISSIONER OF INCOME TAX -IV Appellant
Through: Mr. N.P. Sahni, Advocate with
Mr. P.C. Yadav, Advocate.

versus

M/S DURABLE PROPERTIES Respondent
Through: None

% Reserved on : 15th July, 2010
Date of Decision: 07th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 24th April, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 560/Del/2009 for the Assessment Year 2003-2004.

2. Mr. N.P. Sahni, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 30 lacs made by the Assessing Officer (in short "AO") under Section 68 of Act, 1961



even though the creditor was not traceable at the address provided the respondent-assessee. He laid emphasis on the fact that respondent-assessee had even failed to produce the creditor for examination despite number of opportunities afforded to it.

3. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [for short "CIT(A)] and the Tribunal on the ground that the aforesaid addition was actually an advance of ₹ 30 lacs under an Agreement to Sell which had been forfeited by the respondent-assessee. It is pertinent to mention that the said Agreement to Sell had been executed between the respondent-assessee and a company M/s. Fair N. Square which was registered not only with the Registrar of Companies but also had a Permanent Account number. In fact, the Tribunal in its impugned order has observed as under :-

"7. It is seen that as per the material on record before the authorities below, the assessee had entered into an agreement dated 9.1.2003 for selling its flat at Vasant Kunj, New Delhi to M/s. Fair N. Square for a sum of Rs.90 lakhs. M/s. Fair N. Square paid an advance of Rs.30 lakhs to the assessee. A confirmation with regard to this payment was filed by the assessee before the AO. M/s. Fair N. Square was a regular Income Tax assessee. Its PAN No. was provided by the assessee to the AO. A copy of the agreement regarding the aforesaid property transaction was also filed by the assessee before the AO. It was submitted that M/s. Fair N. Square was a regular company registered with ROC. The details of the said company including its bank account and identity were furnished before the AO. Now, merely because M/s. Fair N. Square could not be served with a notice u/s 133(6) of the Act or the summons u/s 131 of the Act since it was not found existing at the address given by the assessee, it could not have been, merely on the basis of this fact, concluded that the proper transaction as submitted by the assessee, was not genuine, particularly when the assessee had filed even a copy of the



agreement with regard to such transaction before the AO. The ld. CIT(A), while deleting the addition, went through the agreement. It was seen that if the party committed a default in paying the amount of Rs.60 lakhs within one year from the execution of the agreement, the advance of Rs. 30 lakhs was to be forfeited. This agreement has nowhere been questioned by the AO. Besides, the ld. CIT(A) also took into account the fact that the assessee had duly provided all evidences including the PAN number and details of the Wards where the parties were assessed, as also the details of the party with the Registrar of the Companies. All these facts duly established the identity of M/s. Fair N. Square. The AO, on his part, was not able to establish the agreement to sell to be a non-genuine document. Moreover, it had been submitted before the ld. CIT(A) that M/s. Fair N. Square was at the time of hearing of the appeal by the ld. CIT(A), still existing as a company on the website of the ROC. Further, as rightly noted by the ld. CIT(A), it is section 151 of the Act by which specifically takes into its fold such like advances received and forfeited by the assessee. It was on these considerations that the ld. CIT(A) deleted and, in our considered opinion, rightly so, the addition made by the AO.”

4. In view of the aforesaid, we are of the opinion that as the legality and validity of the Agreement to Sell had not been questioned by the AO and as the respondent-assessee had provided all the evidence including the Permanent Account number and details of the Ward where M/s. Fair N. Square was assessed, it cannot be said that the alleged creditor was not a genuine party.

5. In any event, the issue raised in the present appeal is a pure issue of fact and no question of law arises for determination. Consequently, the present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 07, 2010

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