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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 6th August, 2012.

+ ITA 1207/2011

CIT

..... Appellant

Through Mr. N P Sinha, sr. standing counsel

versus

DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEV CORP LTD

..... Respondent

Through Ms. Anusuya Salwan, Mr. Kunal Kohli, Advs.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT,J: (OPEN COURT)

The revenue seems to be aggrieved by an order dated 27.5.2011 of the Income Tax Appellate Tribunal (ITAT) in ITA No.1422 & 1476/Del./2011. The assessment year in this case is 2007-08. A return was filed by the assessee i.e. M/s Delhi State Industrial and Infrastructure Development Corporation Ltd. reflecting the sum of ₹4.10 crores as grant-in-aid and further amounts of ₹1,23,24,000/- and ₹60,000/- or receipts not liable to tax. The Assessing Officer included these sums in the computation of income. In the assessee's appeal the Appellate Commissioner held that the assessee was charged with duty of implementing a scheme of industries in Delhi which had been formulated by the Delhi Government and as a developing agency and not as the owner of this scheme. It had been given the grant only for implementing the scheme. The CIT (Appeals) on this reasoning directed the cancellation of the addition of ₹4.1 crores. The ITAT confirmed this finding as well as the other findings. As far as the maintenance receipts of ₹1,23,84,000/- and the

sum of ₹60,000/- is concerned, the Appellate Commissioner as well as ITAT noted that in the previous years the assessee had not been taxed on them.

2. The revenue urges that the sum of ₹4.1 crores ought to have been assessed as income and that the Assessing Officer's order was justified in the circumstances. It was submitted that the same could not have been reflected in the balance sheet but should have been shown as income in the profit & loss account. It was urged that in any case the assessee will not be entitled to claim depreciation of the building constructed with the aid of the grant in view of the provisions of Section 43(1) of the Act which defines "actual cost". As far as the maintenance amount (₹1,23,00,000/- and ₹60,000/-) is concerned, it was submitted that the assessee used to collect 2% of the consideration payable for the respective units as maintenance charges and keep them in a separate fund which was debited for meeting the maintenance expenses. In these circumstances, the said amount carried the character of income and had to be reflected as such.

3. Ld. Counsel for the assessee relied upon the orders of the CIT(Appeals) and the ITAT and pointed out that for all the previous years, the revenue itself had accepted its contentions vis-à-vis the maintenance receipts. It was also submitted that even the Tribunal had confirmed the revenue's position and by parity of reasoning the revenue cannot urge this for the current assessment year.

4. As far as the grant of ₹4.1 crores is concerned, we find that there is no substantial question of law. We notice that the Tribunal had reasoned as follows:

"12. We have heard both the counsel and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) has given a factual finding upon going through the relevant documents in this regard. That these amounts have been sanctioned to the assessee under the scheme titled 'Assistance to States for Development of Export Infrastructure' and other allied activities. The Ld. Commissioner of Income Tax (Appeals) has also found that sanction order lay down the

condition that the assessee would not incur any administrative expenditure out of the funds so allocated. The assessee has also submitted copy of utilization certificate wherein it was certified the amount has been utilized for the purpose of setting up Training Institute for which it was sanctioned and there was no outstanding balance at the end of the year.

13. From the above, it is amply clear that the amount in this regard is a capital grant. Accordingly, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals) on this issue and decide the issue in favour of the assessee.”

This Court sees no infirmity in the reasoning. The assessee is not claiming depreciation at this stage. The character of the amount is a grant in order to carry out the policies of the Government in the manner it is sought to be utilized by the assessee i.e. for setting up “ASSAYING - Hallmarking Centre and Gems and Jewellery Training Institute”. As regards the question of depreciation it is clarified that it would be dealt with in the appropriate manner at the relevant stage.

As regards the other contentions with regard to the maintenance fund, this Court is of the opinion that a substantial question of law arises i.e. “whether the deletion directed by the Appellate Commissioner and Tribunal were justified”? Narration of facts found in the Assessing Officer’s order would reveal that whatever be the circumstance for the previous year, the assessee used to collect 2% of the sale consideration towards maintenance and keep the same in a separate fund. That fund was charged with the actual expenditure incurred towards maintaining the low cost housing or residential scheme which the assessee undertook on behalf of the Government of NCT. It is a matter of record that some surplus were left over after the actual expenditure were incurred. There is no doubt that in the previous years the revenue did include these amounts in the assessments which were directed to be deleted by the Tribunal. The standing counsel says that the orders of the Tribunal have become final. However, the essential characteristic as an income or sums

received by the assessee cannot be denied. There is no trust under which the assessee can be said to hold the receipts. The assessee is collecting the maintenance charges for maintaining the properties of the housing scheme, and obviously for defraying the expenses. The receipts are its own and merely because some expenditure is required to be incurred on maintenance, the funds collected do not become funds kept or held in trust. The assessee's books would of course reflect the actual expenditure incurred which would naturally be permitted to be claimed as expenses. We also notice that the assessee had agreed as follows by its letter dated 29.10.2009:

“The observation pertains to low cost having scheme. The ground rent is not a part of the Income of the Corporation. However the maintenance charges received will be shown as income of the Corporation during the current financial year.”

5. For the above discussion, the appeal has to succeed in part. The substantial question of law framed is answered in favour of the revenue; the sum of ₹1,23,84,000/- and further amount of ₹60,000/- directed to be deleted by the Appellate Commissioner and Tribunal were without justification. The order the Assessing Officer is hereby restored. It is further clarified that the expenditure actually incurred on the account of maintenance would be allowed by the Assessing Officer for the assessment year under question. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

AUGUST 06, 2012

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