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

% Date of Decision : 18th July, 2012.

\+ ITA 205/2011

CIT ..... Appellant
Through: Mr. Sanjeev Rajpal, Sr. Standing Counsel.

versus

DLF OFFICE DEVELOPERS ..... Respondent
Through:Mr. Ajay Vohra with Ms. Kavita Jha, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J: (OPEN COURT)

This is an appeal filed by the Commissioner of Income Tax against the order passed by the Income Tax Appellate Tribunal (hereinafter referred to as "Tribunal") in ITA No.3355/Del./09 dated 27.11.2009.

2. We are concerned with the assessment year 2004-05. The assessee is a partnership firm formed in the previous year relevant to the assessment year 1999-00 to carry on the business of developing and dealing in real estate, construction of commercial buildings and letting them out or selling them. In accordance with this object, the assessee constructed a multi-storied building known as the Gateway Tower in DLF City, Gurgaon. The building was let out to various tenants and in the relevant assessment year the assessee earned rental income of ₹5,23,77,351/-. The rental income, after claiming the allowable deductions as per Section 24 of the Income Tax Act, 1961 was declared under the head "income from house property". In the course

of the assessment proceedings, the Assessing Officer examined the lease documents and other relevant details and noted that the tenants were paying maintenance charges at ₹11/- per sq.ft. to a company by name DLF Service Ltd. (hereinafter referred to as "DSL"). The charges were paid for services rendered by DSL in respect of the maintenance of the common areas in the property such as the lounge area, car park, corridors and passages, lift maintenance and maintenance of the common facilities. The Assessing Officer took the view that as owner of the building it was the responsibility of the assessee to maintain the same and any service charges paid by the tenants for such services ought to be justly taxed in the hands of the assessee. He also opined that the amount paid by the tenants to DSL was nothing but a part of the rent and the same should be added to the rental income received by the assessee. The maintenance charges paid to DSL by the tenants were ₹1,84,08,764/-. After allowing standard deduction of 30% of the amount as provided in Section 24(a) of the Act, the net amount of ₹1,28,86,135/- was added to the income declared under the head "income from house property".

3. The addition made as above having been sustained by the CIT(Appeals), the assessee filed a further appeal before the Tribunal. The Tribunal noted that the assessee derived rent from the tenants as owner, but the service charges in respect of the common facilities were directly paid to DSL, which was the service provider, and those charges were included in the business income of DSL and offered and assessed to income tax in its assessments. The Tribunal further held that under Section 23(1) of the Act, only the rent received or receivable was taxable and nothing more. The Tribunal noted that the assessee was not charging any maintenance charges from the tenants nor was it providing any services by way of maintenance of the common areas and facilities and therefore nothing was assessable in its hands as maintenance charges forming part of the rent. The Tribunal also examined the clauses in the lease agreement and noted that the following clause was relevant :

> *"It is clarified that at present various services, facilities and civic amenities in DLF City where Demised premises/said plot/said building are located are being maintained by DLF Service Limited (herein after referred to as DSL). The Maintenance Services to be provided by DSL are more appropriately detailed in Annexure-IV thereof and charges for such Maintenance Services are payable at 1.2 times of the actual expenses which is presently estimated at Rs.11/- per sq.ft. of super area per month of DSL or any other nominee(s)/assignee(s) of DLF Universal Limited with effect from the Rent Commencement date in accordance with the terms of this Lease Deed."*

According to the Tribunal the aforesaid clause clarified the factual position that the assessee was neither providing any maintenance of the common areas and facilities nor was it in receipt of any maintenance charges from the tenants for the same. The Tribunal further clarified that it did not appear to be a collusive transaction to avoid taxation of any income in the hands of the assessee. The services were found to have been actually rendered by DSL. A further finding of the Tribunal was that the assessee did not have any domain over the recovery of maintenance charges nor did it have any role to play in the business activities of DSL. It was found that in the past assessments no such view was taken as was taken by the Assessing Officer for the year under appeal. In this view of the matter and having regard to the rule of consistency, the Tribunal deleted the addition and allowed the assessee's appeal.

4. This seems to us to be a clear case presenting no difficulty. The facts found by the Tribunal are not under challenge. No case has been made out to prove that the entire transaction was the result of a collusive arrangement to divert the income which was in truth and fact earned by the assessee. The arrangement between the tenants and DLS has not been impeached and in our opinion also there are no materials to question the same on the ground of collusion. The legal principle involved admits of no doubt. The assessee being the owner of the property, is assessable under Section 22 only in respect of the annual letting value of the same. The services for maintenance of the common areas and facilities were found to have been actually rendered by DLS and

not by the assessee. DLS may be part of the same group, but it is a separate corporate entity carrying on business as service provider for maintenance of properties. The arrangement between the tenants and DLS is a part of the business transaction entered into in the regular course of the business of DLS. The assessee firm has not been found to have actually enjoyed the service charges paid to DLS and the Tribunal has found that the assessee had no domain over the recovery of the maintenance charges nor had any role to play in the business activities of DLS. The view taken by the Tribunal both on facts and in law seems to us to be unexceptionable. We are, therefore, of the opinion that no substantial question of law arises for consideration. We accordingly, dismiss the appeal with no order as to costs.

R.V.EASWAR, J.

S. RAVINDRA BHAT, J.

JULY 18, 2012
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