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

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Date of decision: 28.02.2022

+ **ITA 31/2022**

STAR REALCON PVT. LTD.

..... Appellant

Through: Mr. V.N. Jha & Mr. Rohit Tiwari,
Advocates

versus

PR. COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr. Pragati Aneja Sharma, Mr. Prayas
Aneja & Mr. Sharad Besoya,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 10375/2022

1. Allowed, subject to just exceptions.

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2. This is an appeal directed against the order dated 21.01.2021, passed by the Income Tax Appellate Tribunal (in short 'the Tribunal') in ITA No.1110/Del/2019.

3. The principal grievance of the appellant is that the Tribunal has sustained the disallowance of Rs.20,00,000/- said to have been paid by the appellant towards purchase of land under Section 40A(3) of the Income Tax Act, 1961 (in short 'the Act').

4. Briefly, the facts of the case are that the appellant had filed its return of income for the assessment year 2013-14, on 30.09.2013. The appellant had declared “NIL” income.

4.1. The Assessing Officer (‘AO’) issued a notice under Section 143(2) of the Act, which ultimately led to the appellant’s taxable income being assessed at Rs. 22,88,072/-. In arriving at the taxable income, the appellant disallowed a cumulative amount of Rs. 20,00,000/- said to have been paid by the appellant in cash towards purchase of parcel of land in Ghaziabad, Uttar Pradesh and in Bhiwadi, Rajasthan. Cash to the extent of Rs.10,00,000/- out of a total amount of Rs.3.36 crores was paid in one case and another tranche of Rs. 10,00,000/- out of Rs.12.87 crores was paid in the other case. Besides this, Rs. 2,88,072/- was also disallowed under Section 14A of the Act. The assessment order was passed under Section 143(3) of the Act, on 15.03.2016.

4.2. The appellant, being aggrieved, carried the matter in appeal. The Commissioner of Income Tax (Appeals) [in short “CIT(A)”], vide order dated 28.01.2019, rejected the appeal.

4.3. In these circumstances, the appellant preferred an appeal before the Tribunal.

5. Counsel for the appellant says that the only disallowance that the appellant wishes to agitate is the one which the AO ordered having regard to the provisions of Section 40A(3) of the Act.

5.1 To be noted, counsel for the appellant says that he is not agitating the amount disallowed by the AO by recourse to Section 14A of the Act.

5.2. In support of the plea that the disallowance ordered by the AO having regard to Section 40A(3) of the Act was uncalled for, the submission made

by the counsel for the appellant is that Rs. 20,00,000/- had to be paid in cash as the transaction had to be closed and the money was required to be paid on a Sunday, when the Bank was closed. The fact that a Bank holiday was a good enough reason was sought to be supported by the counsel for the appellant by relying upon Rule 6DD(j) of the Income Tax Rules, 1962, which reads as follows:

“6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account ¹[account payee bank draft, exceeds twenty thousand rupees.]

*.....
²(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
.....”*

5.3. The Tribunal, having regard to the totality of facts, has, in fact, remanded the matter to the AO for enabling the appellant to satisfy the AO as to why the payments in cash had to be made on a Sunday, and why the provisions of Section 40A(3) of the Act would not apply in the appellant's case, when the land is reflected as a “non current investment” in the audited financial statements and is, consequently, not claimed as an expenditure in the Profit and Loss Account.

6. We had asked the learned counsel for the appellant as to whether any agreement to sell was executed between the parties prior to the sale.

¹ Substituted with [account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees] by the Income-tax (3rd Amendment) Rules, 2020, w.e.f. 29-1-2020.

² Clauses (j) omitted by the Income-tax (3rd Amendment) Rules, 2020, w.e.f. 29-1-2020.

6.1. However, counsel for the appellant was unable to answer our query.

6.2. We had also asked the learned counsel for the appellant as to whether any copy of the sale deed has been placed on record. Learned counsel for the appellant says that the copy of three [3] sale deeds, which are in issue, have not been placed on record.

7. In our view, the interest of the appellant is still intact as the Tribunal has remitted the matter to the AO. The appellant, in our view, as correctly held by the Tribunal, needs to satisfy the AO as to whether in the facts and circumstances of the case, the provisions of Section 40A(3) of the Act would apply. The aspect of immediacy of making payment on a Sunday [i.e., a Bank holiday] may also have to be addressed.

8. Therefore, for the aforesaid reasons, we are of the view that no interference is called for with the order of the Tribunal, and that, at this stage, no substantial question of law arises for our consideration.

9. The appeal is, accordingly, dismissed.

(RAJIV SHAKDHER)
JUDGE

(SUDHIR KUMAR JAIN)
JUDGE

FEBRUARY 28, 2022 / rd

Click here to check corrigendum, if any