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

+ ITA 180/2022 & CM APPL.27816/2022

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 3
..... Appellant

Through: Mr.Ajit Sharma, Sr.Standing Counsel.

versus

M/S UTECH DEVELOPERS LTD. Respondent

Through: Ms.Kavita Jha, Advocate with
Mr.Udit Naresh and Mr.Himanshu
Aggarwal, Advocates.

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Date of Decision: 07th July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 30th June, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3736/Del/2016 for the Assessment Year 2009-10.
2. Learned counsel for the Appellant states that the ITAT has erred in deleting the additions made by the Assessing Officer on account of disallowance of travel expenses without considering that the assessee had failed to explain the purpose of the journey and that it was 'wholly and exclusively' for business.



3. He also states that the ITAT has erred in deleting the additions made by the Assessing officer on account of disallowance of loan interest expenses, without considering that there was no nexus between the utilization of borrowed funds and business activity of the assessee. In support of his submission, he relies on Section 36(1)(iii) of the Income Tax Act, 1961 ('the Act').

4. However, a perusal of the paperbook reveals that both the CIT(A) as well as ITAT have given concurrent findings of fact that in the year under consideration, the assessee had provided the details vis-à-vis name of its employees as well as justification/ purpose of travel. It was further held by both the authorities below that the assessing officer arbitrarily made an addition on an estimated basis @ of 20% of the total travelling expenditure which includes domestic as well as foreign travel and conveyance of the employees. Both the CIT (A) and ITAT emphasised that the assessing officer had failed to provide any cogent reasoning or working, based on which such disallowances were made.

5. Further, both the CIT(A) as well as ITAT have held that the assessee had carried out its business of real estate and infrastructure development during the year under consideration as it had undertaken more than nine projects and had carried inventory of Rs.53.87 crores of traded goods in the form of apartments which were ready for sale and which were sold in the subsequent years. The two authorities below have also found that the respondent-assessee had participated in joint venture projects outside India in consonance with its Memorandum of Association and there was clear connection between the money borrowed and its utilization for the purposes of business of real estate and infrastructural development. Both the appellate



authorities also observed that the assessee duly demonstrated that the funds borrowed had been deployed/invested for various business projects of the assessee such as Rs.10 crores utilized for furnishing bank guarantee for bidding for lease hold rights from Rail Land Development Authority, Rs.25.50 crores for aggregation of land to develop residential/commercial complex-which is main business of the company, Rs.6.05 crore for payment of interest and other expenses, Rs.22 crores paid to AKC Developers Ltd. as equity contribution in JV of Municipal Solid Waste Project and Rs.7.35 crores to Qcell Ltd. Gambia as its contribution for Joint Venture of IT enabled services etc.

6. Consequently, this Court is of the view that the appellant, by way of the present appeal, seeks interference with finding of facts arrived at by the CIT(A) and ITAT by asking this Court to re-appreciate the evidence.

7. In *State of Haryana & Ors. vs. Khalsa Motor Limited & Ors., (1990) 4 SCC 659*, the Supreme Court has held that the High Court would not be justified in law in reversing in second appeal, the concurrent finding of fact recorded by two Courts below. This Court is further of the opinion that the impugned order calls for no interference as it suffers from no perversity. No substantial questions of law arise in this matter. Accordingly, the present appeal and application are dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 7, 2022
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