

Delhi high court girnar no tax on gross receipt

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 121/2014

THE COMMISSIONER OF INCOME TAX-IV Appellant

Through: Mr Sanjeev Sabharwal, sr. standing counsel with Mr Ruchir Bhatia, Adv.

versus

GIRNAR INFRASTRUCTURE PVT.LTD. Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

O R D E R

01.04.2014

The revenue claims to be aggrieved by the order dated 26th July, 2013 of the ITAT whereby the assessee's appeal was allowed.

The assessee was incorporated during assessment year 2008-09 on 1.8.2007. Out of its 50,000/- shares, 49,940 shares were directly held by M/s Unitech Ltd. The balance 60 shares were also held beneficially by it. The assessee purchased 19.559375 acres of land situated in Village Naurang Puri, Tehsil and Dt. Gurgaon for an aggregate of Rs.39.15 cores; the entire expenditure was paid directly by the holding company which also incurred other expenses such as license fee of Rs.6.41 cores and security fees of Rs.1.73 lakhs which were debited to the assessee's account. M/s Unitech Ltd. classified the amounts under the head 'advances'. The assessee disclosed the total cost of the land and other expenses and claimed them as cost incurred in stock in trade and also disclosed M/s Unitech Ltd. as its Creditor. By a development agreement dated 31.12.2007 with M/s Unitech Hightech Builders P. Ltd. it sought sale of development rights in respect of 2.443 acres of land for a sum of Rs.11,44,23,836/-. The AO sought to bring the entire amount to tax. The assessee had claimed that the development rights were not taxable and in the alternative claimed expenses incurred by it had to be deducted and only the balance can be taxed. The AO rejected the claim; the order was upheld by the CIT (A).

The ITAT in its impugned order discussed the nature of the transaction as well as various heads of expenditure. It rejected the claim that the sale purchase of the development rights were not taxable, but was of the opinion that the assessee's alternative claim was well-founded. The proportionate cost of the land of 2.443 acres, the license fee of Rs.6,41,28,750/-, the scrutiny fee were held allowable as deduction. The total land cost in terms of the figures available to the AO was Rs.11,32,02,336/-. The amount of land transferred to Unitech Hightech Builders on the other hand was Rs. 11,44,23,836/-. In this manner the profit brought to tax was Rs.12,21,500/-, as directed by the Tribunal.

It is argued by the revenue that the ITAT fell into error in not looking into the reality of transactions by which virtually all rights were made over to Unitech, the holding company and that the assessee was left with no rights. At the same time the revenue is unable to show how the expenses which were based upon actual figures, can be disregarded altogether or even partially and the gross amount received for the sale can be brought to tax and could not suggest an alternative method to

determine the profits.

We notice that the ITAT had relied upon previous ruling of this Court in J M Wire Industries V. CIT (ITR 96/1989 dated 15.7.2010). The

Tribunal was of the opinion that when development rights are transferred it has a cost and when the receipt is taxed and the corresponding cost

has to be allowed as expenditure. This view is in conformity with the fundamental principle in taxation that the gross receipt cannot be brought to tax, and only the profits can be which means that the cost has to be allowed as deduction. Given this situation, the Tribunal noticed that the AO had accepted the value of the closing stock and that deduction may be allowed as expenditure but in the application of such principle had faltered. Since in the present case the figures provided by the assessee as to the nature of the expenditure i.e. proportionate value of the land at the time of acquisition, the licence fee paid etc. are verifiable and do not appear to be disputed, and in the absence of any alternative method, this Court is of the opinion that the ITAT's approach in this case cannot be faulted. For the above reasons this Court is of the opinion that no substantial question of law arises for consideration and the appeal is therefore dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

APRIL 01, 2014

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