

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.3503/Del/2018
Assessment Year: 2015-16

ITO, Ward –(3), New Delhi	vs.	M/s Fortune Land and Housing Pvt. Ltd. RZ-D-5, Mahavir Enclave, New Delhi 110045 PAN AAACF 9367 J
(Appellant)		(Respondent)

For Assessee :	Shri Sahil Sharma, Adv. Shri Saurabh Nandy, Adv.
For Revenue :	Ms. Maimun Alam, Sr. DR

Date of Hearing :	27.04.2023
Date of Pronouncement :	16.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-3 New Delhi dated 08.03.2018 for AY 2015-16.

2. The ground raised by the revenue as under:-

1. *"Ld. CIT(A) erred in law and on the facts of the case in deleting the addition of Rs. 8,91,62,716/- made by the A.O. on account of the additional compensation of land received by the assessee form HUDA."*

3. The learned Senior DR pressing into service sole ground of revenue submitted that the AO in para 8.2 of assessment order rightly held that the assessee company was the legal owner of the land acquired by the HUDA it was not under legal obligation to transfer the same to Orris Infrastructure P. Ltd. (OIPL). The learned Senior DR also submitted that in said para the AO recorded categorically findings that the claim of assessee that the land acquired by HUDA is pertains to OIPL does not have any locus standi. The learned DR submitted that therefore the AO was right in treating the entire enhanced compensation received by the assessee company at its business receipts because the land under question was never transfer to OIPL. The learned Senior DR

submitted that the Ld. CIT(A) has granted relief to the assessee without any basis therefore the first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above, the learned counsel of assessee drawing our attention towards para 2.1 of first appellate order and submitted that the enhanced compensation which was received by the appellant from the HUDA was transferred to OIPL in accordance with the collaboration agreement for the purpose of execution of said collaboration. He further submitted that the Ld. CIT(A) before granting relief to the assessee examine and verify that the enhanced compensation received by the appellant has been duly offered to tax as income by OIPL under the head income of from operations for A.Y. 2014-15 relevant to A.Y. 2015-16 therefore the Ld. CIT(A) was right in granting relief to the assessee.

5. On careful consideration of above submissions, first of all, from relevant part of first appellate order i.e. para 2.1 we note that the Ld. CIT(A) has granted relief to the assessee with following observations and findings:-

2.1 I have carefully considered the submissions of the appellant, the assessment order and the facts of the case. The appellant has submitted that after it purchased land at Badha village and Hayatpur village near Gurusram in the state of Haryana, it was not possible for the appellant company to develop the said land due to its financial and infrastructure constraints. In this situation another company Orris Infrastructure Pvt. Ltd. (OIPL) approached appellant company for developing residential colony on the land owned by appellant. Collaboration agreements dated 25.10.2007 and 26.10.2010 were entered between appellant company and OIL and executed with regard to the construction and development of the above land. Perusal of the agreement reveals that the appellant transferred its entire right pertaining to the impugned land irrevocably. This also included the right to receive additional compensation from HUDA. This is clear from clauses 2 and 3 of the above agreement, where it is clear that the appellant has transferred all its right in respect of the land and has given full authority to OIPL. Hence the compensation which was received by appellant from HUDA was also transferred to OIPL in accordance with the collaboration agreement for the purpose of executing the said collaboration. It has been further submitted that the compensation received by appellant has been duly offered to tax as income by OIPL under the head "income from operations" for FY 2014-15 relevant to Ay 2015-16. In view of the fact that the total amount of compensation of Rs. 10,90,99,682/- which included interest of Rs. 3,98,73,933/- on which 50% deduction w/s 57 of the 1.T. Act was allowed to assessee by assessing officer, resulting in total addition of Rs. 6,92.25,7491 under the head "income from other sources" in the hands of appellants Since the entire land rights were transferred by appellant to Orris Infrastructure Pvt. Ltd (OIPL) and the compensation thereon was offered to tax by OIPL, assessing officer is directed to delete the addition of Rs. 8,91,62,716/- in the hands of appellant. Hence, these grounds of appeal are allowed.

6. On careful consideration of above noted rival submissions and conclusion and findings recorded by the Ld. CIT(A) (supra), at the very outset we note that the AO has not disputed that there was a collaboration agreement vide dated 25.10.2007 and

26.10.2010 were entered between appellant company and OIPL which were executed with regard to the construction and development of land. The Ld. CIT(A), from the said collaboration agreement, noted that the appellant had transferred its entire rights pertaining to the land in question irrevocably. The rights given by the appellant to OIPL also include the right to received addition or enhanced compensation from HUDA and this fact found fortified from the clauses 2 & 3 of collaboration agreement where it was made clear by the assessee and the OIPL i.e. parties to the collaboration agreement that the appellant has transferred all its right in respect of land and has given full authority to the OIPL. After evaluation and examination of said fact the Ld. CIT(A) concluded that the enhanced compensation received by the assessee company from HUDA was also transferred to OIPL in accordance with the collaboration agreement. The Ld. CIT(A) before granting relief to the assessee also noted that the enhanced compensation received by the appellant has been dully offered to tax as income by OIPL under the head income from operation for F.Y. 2014-15 relevant to A.Y. 2015-16. In view of foregoing logical analysis of facts noted by the Ld. CIT(A) we concur with the findings arrived by the Ld. CIT(A) that since the entire land rights were transferred by the appellant to OIPL and the enhanced compensation including interest thereon was offered to tax by OIPL after claiming deduction of 50% of interest u/s. 57 of the Act and the same income cannot be taxed in the hands of assessee. Accordingly, we are unable to see any ambiguity perversity or any other valid reason to interfere with the findings arrived by the Ld. CIT(A) and hence we uphold the same. Accordingly, the sole ground of revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 16.06.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 16th June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi