IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Judgment Reserved On 09.08.2021	Judgment Pronounced On 24.08.2021

T.C.A.No.1112 of 2010

M/s.Caborandum Universal Limited,
43, Moore Street,
Chennai – 600 001. .. Appellant

-vs-

The Asst. Commissioner of Income Tax,
Company Circle-I(3),
Chennai. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 03.06.2009 made in I.T.A.No.594/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai Bench.

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For Appellant : Mr.Vikram Vijayaraghavan

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

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JUDGMENT

T.S.Sivagnanam, J.

This appeal, by the appellant/assessee, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 03.06.2009, made in I.T.A.No.594/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai Bench (for brevity "the Tribunal") for the assessment year 2003-04.

2.The appeal was admitted on 24.01.2011 to decide the following substantial question of law:-

> "*Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that a portion of the sale consideration retained in the Escrow Account for meeting liabilities and obligation has accrued to the assessee in this year and hence should be taken into account for the purpose of computation of Capital Gains?*"

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3.The assessee Company engaged in the manufacture and sale of Abrasives, Refractories and Electrominerals, etc. filed their return of income for the assessment year under consider, AY 2003-04 admitting an income of Rs.36,38,36,539/-. The return was processed under Section 143(1) of the Act and subsequently selected for scrutiny by issue of notice under Section 143(2) of the Act dated 14.10.2004. There were several issues which were discussed by the Assessing Officer with the authorized representative of the assessee and in the case on hand, we are concerned about the issue pertaining to the slump sale of Electrocast Refractories Plant at Palghat. The Assessing Officer has dealt with this issue in paragraph No.6 of the assessment order dated 28.02.2006. It is stated that during April 2002, the Electrocast Refractories Plant located at Palghat belonging to the assessee was sold for a total consideration of Rs.31.146 Crores to M/s.SEPR Refractories (I) Ltd. [hereinafter referred to as "SEPR"]. The assessee had returned a long term capital gain of Rs.235,781,805/- on the said transaction. The Assessing Officer noted that the assessee has sold the plant at Palghat for a total sale consideration of Rs.31.146 Crores but it has

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considered only Rs.27.89 Crores as sale consideration for computation of long term capital gain. Therefore, the Assessing Officer issued show cause notice to the assessee calling upon them to explain as to why Rs.31.14 Crores should not be considered for computation of long term capital gains.

4.The assessee by letter dated 04.01.2006 responded by stating that the difference between the consideration taken for computation of capital gains and that for which the plant was sold was on account of the fact that an amount of Rs.325 lakhs was kept in an Escrow account to meet any contingent liabilities. After taking note of the said submission, the Assessing Officer observed that it is true that an amount of Rs.325 lakhs was kept in an Escrow account, however the total sale consideration for sale of the undertaking as per the agreement is Rs.31.14 Crores and an amount of Rs.325 lakhs which was kept in an Escrow account pursuant to the assessee agreed to the same would only constitute an application of its income and the whole consideration has accrued to the assessee immediately on the execution of the agreement for sale and since the total consideration has accrued to the assessee in the year of sale, namely, during

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the assessment year 2003-04, the same has to be offered in full for tax in the said assessment year itself and the fact that part of it is kept in Escrow account has not been received during the year is not relevant for such purpose. Accordingly, the capital gain was recomputed and the assessment was concluded.

5.Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-III[CIT(A)], Chennai. The CIT(A) on examination of the fact held that the amount in Escrow account has been utilized by the purchaser to indemnify against breach of warranty or other losses or on account of further litigation as a result of non-compliance to the conditions of the agreement on behalf of the assessee. Therefore, the CIT(A) opined that the sum retained in the Escrow account had not accrued to the assessee in the year under consideration [AY 2003-04]. In other words, the CIT(A) held that the amount of Rs.325 lakhs kept in the Escrow account has neither been received nor accrued by/to the assessee and since the said amount has been subsequently received by the assessee after the stipulated period of agreement, the said amount has been offered to tax by

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the assessee under the head capital gains in the year of its receipt and therefore, the Assessing Officer was not justified to tax the said amount in the year under consideration. With this observation, the CIT(A) directed the Assessing Officer to delete the addition of Rs.3.25 Crores pertaining to the said amount kept in Escrow account.

6.Aggrieved by such order, the revenue preferred an appeal before the Tribunal contending that the amount kept in Escrow account would represent application of income and the said amount is only a formality and this will be clear from the return of income filed by the assessee for the subsequent year wherein the entire amount of Rs.3.25 Crores had been received and offered for taxation and no deduction towards claims/warranties from the amount kept in Escrow account was made. There were other grounds raised on other issues which we are not concerned in this appeal.

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7.The Tribunal after elaborately considering the submissions made on either side and the covenants and conditions contained in the Business Sale

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Agreement dated 07.11.2001 held that the transfer of asset took place during the year under consideration [AY 2003-04]; the Business Sale Agreement dated 07.11.2001 had given legally enforceable rights to the parties with respect to the transfer of undertaking and the assessee had a right to receive the lumpsum consideration upon effecting the sale in the previous year relevant to the assessment year 2003-04 and there was effective conveyance of capital asset to the transferee. Further the Tribunal noted that there was no change during the year under consideration. Referring to Section 50B of the Act, it was pointed out that it is a special provision for computation of capital gains in case of slump sale and net worth of undertaking is deemed to be the cost of acquisition and the cost of improvement for the purpose of Sections 48 and 49 of the Act as has been specifically provided under sub-section (2) of Section 50B of the Act. Further, taking note of Explanation 1 in Section 50B of the Act, wherein, "net worth" was defined to mean the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account. After noting the statutory provision, the Tribunal held that it is not the case of the assessee that the value of its assets or liabilities

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for the purpose of cost of acquisition or cost of improvement taken is not in accordance with the books of account of the assessee.

8.Further, it was held that the monies kept in the Escrow account are for meeting out the claims that may arise on a future date and that the interest which accrued on the sums retained in the Escrow account have been agreed to be belonging to the seller, i.e. the assessee and also to be paid to him as per the instructions in the Escrow account. Thus, the Tribunal held that the assessee always had a right to receive the sums kept in the Escrow account which though were to be quantified after a specified period, it did not change the agreed lump sum sale consideration which stood finalised based on an agreement between the parties. Therefore, the Tribunal held that the quantification of deductions to be made from the sums lying in the Escrow account would not postpone the charge of such income deemed to be taxed in the year of transfer which is the year under consideration, AY 2003-04. The argument of the assesee that the entire sale consideration is not received in the year of consideration and as such cannot be deemed as income of the year under consideration under the head

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"capital gains", was also considered by the Tribunal and held that it is sufficient if in the relevant year profits have arisen out of sale of capital assets, that is, to say when the assessee had a right to receive the profits in the year of consideration before us, it would attract liability to tax on capital gains under the Act. Further, it held that it was not necessary that the whole amount of lump sum consideration should have been received by the assessee in the previous year relevant to the assessment year under consideration out of the sale of its undertaking and whatever the parties did subsequent to that year, will have no barring on the liability to tax as deemed income of the year under consideration. In support of such conclusion, reliance was placed on the decision of this Court in the case of ***T.V.Sundaram and Sons Ltd. vs. CIT [(1959) 37 ITR 26 (Mad)]***. The decisions which were referred to by the assessee were distinguished on facts. Ultimately, it was held that the CIT(A) erred in reversing the order of the Assessing Officer and accordingly, the decision of the CIT(A) was set aside and the order passed by the Assessing Officer was restored. Aggrieved by the same, the assessee is before us by way of this appeal.

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9.Mr.Vikram Vijayaraghavan, learned counsel appearing for the appellant has drawn our attention to the Business Sale Agreement and in particular, covenant No.14 with dealt with indemnities for other losses and covenant No.15 which dealt with retention sum for indemnities. The learned counsel has also drawn our attention to the Second Supplementary Agreement dated 18.10.2003 and in particular, Clause J, wherein there is a reference to a charge of theft of electricity and a demand raised by the Kerala State Electricity Board to the tune of Rs.21,645,024/- from the purchaser of the asset. Further, the learned counsel has referred to Clause 14 of the Agreement which speaks about as to how the Escrow Agent has to be notified qua the claim made by the Kerala State Electricity Board. With regard to computation of amount of indemnity, the learned counsel has referred to Schedule 1 of the agreement and to point out that as to what was the liability to the Kerala State Electricity Board before the closing date, i.e. 17.04.2002 and after the closing date. These facts were referred to buttress his submission that the intention behind the parties agreeing to retain a certain sum in Escrow account is to meet the liabilities which may be

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fastened on to the purchaser on conclusion of the sale transaction. Therefore, it is contended that the amount of Rs.325 lakhs which was retained in Escrow account was not received by the assessee during the assessment year under consideration nor it accrued in favour of the assessee during the assessment year under consideration and therefore, the assessee was justified in not including the same while calculating capital gains.

10.In support of his contention, the learned counsel referred to the decision of the High Court of Bombay in ***Commissioner of Income Tax vs. Hemal Raju Shete [(2016) 239 Taxman 0176 (Bombay)]*** and submitted that in the said decision also it was a case where certain amounts were set apart to meet the contingent liability and it was held that the said amount was neither received nor accrued in favour of the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax vs. Hindustan Housing & Land Development Trust Ltd. [(1986) 161 ITR 0524]*** for the same proposition. Reliance was placed on the decision of this Court in the case of ***PNP Power Generating Company Private Ltd. vs. Commissioner of Income Tax***

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(appeals)-III [T.C.A.Nos.60 and 61 of 2018 dated 03.09.2020] with regard to the alternate submission on account of the fact that in the subsequent year the amount has been offered for taxation and it is submitted by the learned counsel for the appellant that the appellant would pray to sustain the main argument instead of the alternate submission. In support of the contention that the sum of Rs.325 lakhs would never accrue to the assessee during the year under consideration, reliance was placed on the decision of the High Court of Gujarat in ***Anup Engineering Ltd. vs. Commissioner of Income Tax [(2001) 247 ITR 0457]***. With regard to as to how retention money withheld by the Contractee has to be construed, the learned counsel relied on the decision of the High Court of Bombay in ***Commissioner of Income Tax vs. Associated Cables (P) Ltd. [(2006) 286 ITR 0596]***, wherein the decision of the Hon'ble Division Bench of this Court in ***Commissioner of Income Tax vs. Ignified Boilers (I) Ltd. [(2006) 283 ITR 295 (Mad)]*** was followed. For the same proposition, reliance was placed on the decision of the High Court of Gujarat in the case of ***Director of Income Tax [International Taxation] vs. Ballast Nedam International [(2013) 215 Taxman 0254 (Gujarat)]*** and the decision of the High Court of Gujarat in

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the case of ***Amarshiv Construction Pvt. Ltd. vs. Deputy Commissioner of Income Tax [(2014) 88 CCH 0229 GujHC***. On the above ground, the learned counsel sought for sustaining the order of the CIT(A) by setting aside the order passed by the Tribunal.

11.Mr.T.Ravikumar, learned senior standing counsel appearing for the respondent/revenue submitted that the order passed by the Tribunal is a well considered order, wherein, the factual aspects were thoroughtly analysed and it was clearly brought out by the Tribunal on facts that the retention money which was retained in the Escrow account had accrued in favour of the assessee in the year under consideration. In this regard, the learned counsel has drawn our attention to the ground of appeal filed by the revenue before the Tribunal and it was pointed out that the entire amount of Rs.325 lakhs which was retained in the Escrow account has been received by the assessee and offered for taxation and no deduction towards claims/warranties from the amount can kept in Escrow account was made as this important factual aspect goes to the root of the matter and it will clearly establish that the said amount accrued in favour of the assessee during the

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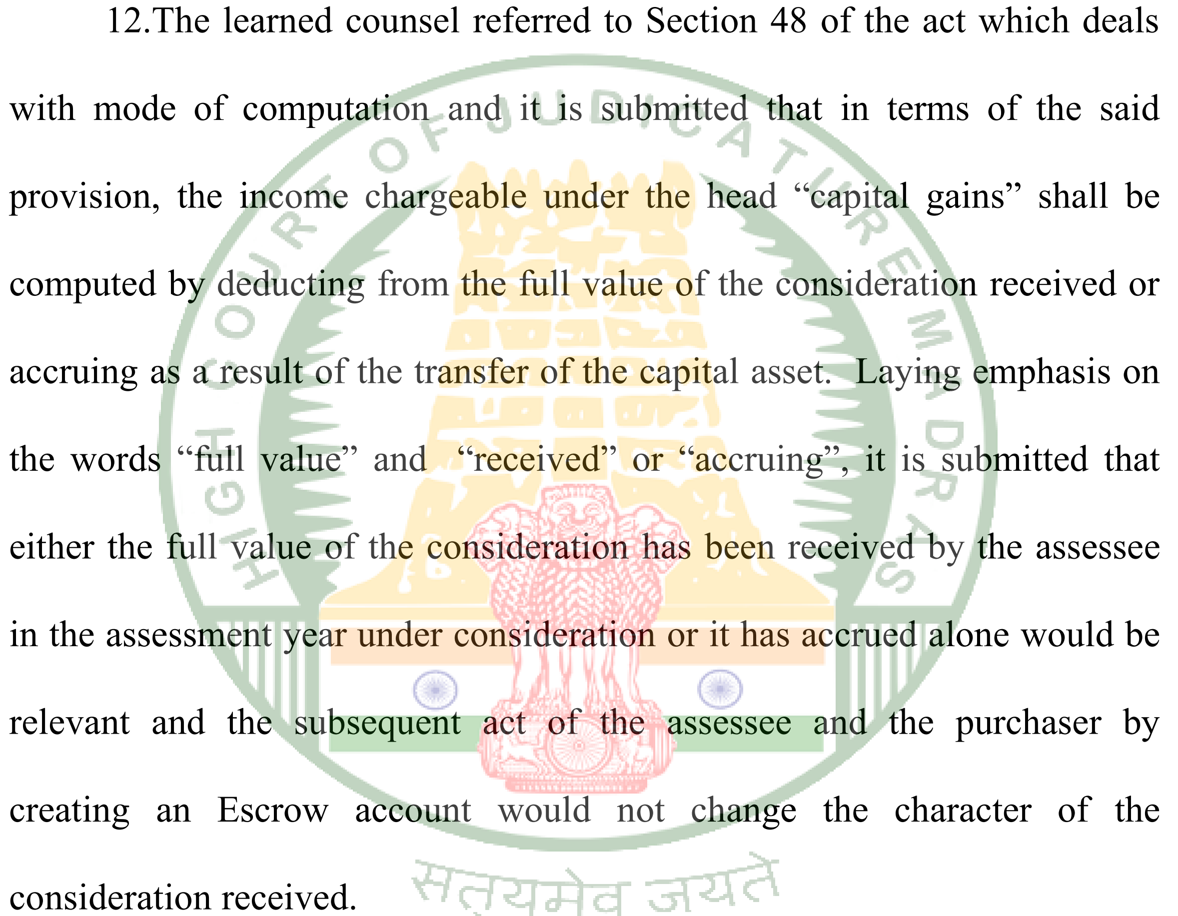
year under consideration and therefore, the finding of the Tribunal is legal and valid.

12.The learned counsel referred to Section 48 of the act which deals with mode of computation and it is submitted that in terms of the said provision, the income chargeable under the head "capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset. Laying emphasis on the words "full value" and "received" or "accruing", it is submitted that either the full value of the consideration has been received by the assessee in the assessment year under consideration or it has accrued alone would be relevant and the subsequent act of the assessee and the purchaser by creating an Escrow account would not change the character of the consideration received.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13.Referring to Clause 2.37 of the Business Sale Agreement dated 07.11.2001 which defines 'Purchase Price', it is submitted that the definition is very clear that the value of the assets and the Net Working Capital shall

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be considered full and final consideration. The learned counsel also referred to Clauses 3.1.1, 3.1.4, 5.1 and 5.2 of the Agreement to substantiate the contention raised on behalf of the revenue. Laying emphasis on Clause 5.2 of the Agreement which deals with 'Liabilities', it is submitted that all liabilities whether ascertained as of the closing date or contingent, potential or disputed including but not limited to all provisions and funds for payment of tax liabilities and employee retirement funds, other employee liabilities and any claims by customers or third parties for allegedly defective products, etc. from the operation of the business on or before the closing date shall be borne solely by the seller. Therefore, it is submitted that Clause 5.2 of the Business Sale Agreement clearly shows that all expenses after the closing date whether it is contingent, potential or disputed has to be borne solely by the seller.

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14.Further, the learned counsel has referred to Clause 6.1 of the Agreement which deals with 'Purchase Price', where the value of the asset has been mentioned as Rs.325,000,000/- and the said amount shall be considered full and final consideration for the business subject to the Post-

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Closing Adjustment of Bad Debts and accounts receivable provided in Clause 11.2.1 of the Agreement. Further, the condition also states that the purchaser shall have no obligation to make any other payments to the seller with respect to the liabilities for any taxes or levies whatsoever which may be assessed against the income or profit realised by the seller as a result of the transaction. The learned counsel has also referred to Clause 6.2 which speaks of the Retention money, Clause 17.1 which speaks with Non-Competition, Clause 23.1 which deals with Taxation. Further, the learned counsel has referred to Schedule 1 of the Agreement which deals with Seller's Warranties and in particular, to Clause 4.2 which deals with Possession and states that the seller has sole and exclusive possession of the property and there is no claim of adverse possession which could be made by any person and also Clause 10 which deals with Litigation. Therefore, it is submitted that the facts clearly demonstrate that the amount retained in the Escrow account which is a subsequent arrangement between the parties can have no impact of the purpose of computation of capital gains on the total sale consideration fixed under the Business Sale Agreement.

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15.In support of his contention, the learned senior standing counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax vs. Attili N.Rao [(2001) 252 ITR 0880(SC)]*** for the proposition as to what would full price realised would be in the context of computation of capital gains. Reliance was placed on the decision of the Hon'ble Division Bench of this Court in the case of ***Commissioner of Income Tax vs. N.M.A.Mohammed Haniffa [(2001) 247 ITR 0066]***, the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax and another vs. George Henderson & Co. Ltd. [(1967) 66 ITR 0622 (SC)]***, the decision of the High Court of Delhi in the case of ***Commissioner of Income Tax vs. Smt.Nilofer I.Singh [(2009) 309 ITR 0233]*** and the decision of the Hon'ble Division Bench of this Court in ***D.Zeenath vs. Income Tax Officer [(2019) 413 ITR 0258 (Mad)]***. On the above ground, the learned senior standing counsel sought for sustaining the order passed by the Tribunal.

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16.In reply, Mr.Vikram Vijayaraghavan, learned counsel for the appellant submitted that all the decisions relied on by the revenue are all

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pertaining to cases relating to mortgage and the terms and conditions of the Agreement between the assessee and the purchaser will clearly show that the retention money was neither received nor agreed in favour of the assessee in the assessment year under consideration.

17.We have heard the learned counsel for the parties and carefully perused the materials placed on record.

18.The controversy which has led to the present appeal emanates from the Business Sale Agreement dated 07.11.2001 entered into between the assessee and the SEPR. The said agreement was for selling of right, title and interest in the FCR business carried out in the factory at Palghat to the purchaser for a lump sum consideration. Clause 2.37 of the Agreement defines 'Purchaser Price' to mean the amount paid by the purchaser to the seller in consideration for the business which is the sum of the value of the assets and the Net Working Capital and shall be considered full and final consideration. Clause 6 of the Agreement deals with 'Purchase Consideration' and in Clause 6.1, the purchaser price for the sale by the

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seller of the business was fixed at Rs.325,000,000/- and this was to be considered as the full and final consideration for the business which is the subject matter of sale. In Clause 6 of the Agreement, a separate clause has been mentioned as Clause 6.2 which deals with Retention money. The parties agreed that a sum of Rs.32,500,000/- shall be held in the retention account on the terms and conditions provided in the Agreement and the Retention Account Agreement. The interest accrued on the retention sum shall belong to the seller and shall be paid to the seller as per the Retention Account Agreement.

19.In Clause 15, the parties have agreed as to for what purpose the retention sum has been retained and to what sums it would be used to indemnify the transaction. Clause 15.1 states that the retention sum shall be paid by the purchaser in the Retention Account at the closing date for the purpose of ensuring that sufficient funds will be available to indemnify the purchaser against any damages or losses arising from or any of the following, namely, (1) Indemnification for Breach of Warranty; (2) Indemnification for other losses; (3) Unpaid Accounts Receivables and

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(4) Pursuant to other obligations to pay or reimburse the Purchaser as provided in the Agreement.

20.Admittedly, in none of the four heads the indemnification had to be extended and it is not in dispute that the entire amount was received by the assessee without any deduction and the said amount of Rs.3.25 Crores was offered for taxation by the assessee in the subsequent year. Therefore, the question would be as to whether the assessee was right in excluding the amount retained in the Escrow account as retention amount while making computation of capital gains. The Assessing Officer and the Tribunal faulted the assessee for doing so but the CIT(A) granted relief to the assessee. Therefore, we need to examine as to whether the CIT(A) was right in reversing the order passed by the Assessing Officer or in other words whether the Assessing Officer and the Tribunal were right in not granting the relief to the assessee. The CIT(A) has not specifically examined as to whether the entire amount of Rs.3.25 Crores has been received by the assessee without any deduction and offered for taxation. But the CIT(A) solely proceeds on the basis that the Escrow account has

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been opened and amount has been retained as retention money to be utilized by the purchaser for indemnification for breach of warranty or any other losses. As noticed above there were four heads under which the retention money would be used to indemnify against losses and admittedly on none of the four heads there was any payment which was required to be made. The CIT(A) concluded that the retention sum retained in the Escrow account had not accrued to the assessee in the year under consideration.

21.In the case of ***Hindustan Housing & Land Development Trust Ltd.*** relied on by the assessee, the question was whether the revenue can claim that the sum payable to the assessee as compensation can be said to have accrued to it as income during the previous year ended 31st march, 1956, relevant to the assessment year 1956-57. The meaning of the words 'arising or accruing' was considered and explained to mean that they describe a right to receive profits and that there must be a debt owed by somebody unless and until there is created in favour of the assessee a debt due by somebody. It was observed that it cannot be said that he has acquired a right to receive the income or the income has accrued to him. On

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facts, it was found that the award in the land acquisition case made by the arbitrator enhancing the compensation payable to the assessee was entirely in dispute in the appeal filed by the State Government and the dispute being real and substantial, the assessee was not permitted to withdraw the amount deposited by the State Government without furnishing security bond for refunding the amount in the event of the appeal being allowed. Therefore, it was held that there was no absolute right to receive the amount at that stage.

22.The said decision, in our considered view, would not render assistance to the assessee as the terms and conditions of the Business Sale Agreement are vivid and clear. The total sale consideration being the full and final payment has been clearly mentioned. After fixing the sale consideration to be full and final, the parties mutually agreed to retain a specified quantum of money in an Escrow account to meet any one of the exigencies as mentioned in Clause 15 of the Agreement. Therefore, for all purposes the entire sale consideration had accrued in favour of the assessee during the year under consideration and admittedly, possession of the asset was also handed over to the assessee. Apart from that, from the sum of

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Rs.3.25 Crores which was retained in the Escrow account, no deductions were made from the said account and the entire amount has been received by the assessee without any deductions and offered to tax.

23.In the case of ***Anup Engineering Ltd.***, the Court examined the contract between the parties to ascertain whether a sum of Rs.40 lakhs was income of the assessee and it was held that only when the right of the assessee to receive Rs.40 lakhs was established, the income would accrue and arise and not otherwise. In the said case, on facts it was found that the entire consideration for sale of the plant did not accrue to the assessee on account of impending liability on the warrant clause as the plant was not found to be satisfactory and a customer had a right to retain the part of the sale consideration under the terms of the sale contract. The said decision cannot be applied to the facts and circumstances of this case as it is not in dispute that the entire consideration had accrued to the assessee and out of the same by agreement between the parties a specified amount was retained in the Escrow account which would mean that the account is operatable only with the consent and consensus of both parties. This can in no manner be

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construed to take the case of the assessee outside the purview of accrual of the sale consideration in favour of the assessee during the assessment year under consideration.

24.The decision in ***Ignified Boilers (I) Ltd.*** was a case where the contract between the parties had a specific clause that 10% of the contract price would be retained by the principal contractor and it would be paid after one month subject to the satisfactory performance of the boilers. Such is not the facts in the case on hand as the Business Sale Agreement clearly specified that full and total sale consideration is payable and subsequent conduct of the parties in earmarking a particular sum of money in an Escrow account cannot change the facts and circumstances of the case.

25.The decision in the case of ***Amarshiv Construction Pvt. Ltd.***, wherein it was held that the retention money of the contractor for performance guarantee continued to retain the character of retention money though temporary release of the same was permitted on furnishing of Bank Guarantee and cannot be equated with the control over the said amount still

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remained with principal. Equally so, the other decisions relied on by the learned counsel for the assessee cannot be applied to the facts and circumstances of this case.

26.In ***N.M.A.Mohammed Haniffa***, the term full value of consideration was explained and it was pointed out that the said term clearly indicates that what is required to be taken note of is the total consideration received for the transfer and in this context, the term 'total' and 'full value' would have the same meaning, the consideration may be received or it may accrue as a result of transfer. Further, it was pointed that the word 'received' does not necessarily connote the actual receipt of the cash into the hands of the assessee-transferor. Further, if the transferor instead of receiving the full value himself and thereafter discharge the mortgage to which the property has been made subject, allows the transferee to retain and apply part of the total consideration to effect such discharge, such discharge by the vendee is on behalf of the vendor and the payment of money to the mortgagee is from out of the moneys payable by the vendee to the vendor and the amount so applied for discharge of the mortgage forms part of the

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total consideration irrespective of whether the vendee or the vendor discharges the mortgage.

27.In ***George Henderson & Co. Ltd.***, which was referred to by the Tribunal, the Hon'ble Supreme Court had pointed out that the expression 'full value' means the whole price without deduction whatsoever and it cannot refer to adequacy or inadequacy of the price bargained for, nor has it any necessary reference to the market value of the capital asset which is the subject matter of the transfer.

28.On facts, when we examine the Business Sale Agreement, it is not disputed by the parties that the full and final consideration is Rs.325,000,000/- after having agreed upon the full and final consideration, the parties agreed to retain a particular amount of money in an Escrow account which cannot be construed to take away the case of the assessee from the expression 'accrued' occurring in Section 48 of the Act.

29.Therefore, the above decisions relied on by the revenue will

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clearly explain that the conduct of the assessee and the purchaser in retaining a particular amount of money in the Escrow account cannot take away the amount from the purview of full consideration received/accruing in favour of the assessee for the purpose of computation of capital gains under Section 48 of the Act. As already pointed out, the assessee has received the entire amount of Rs.325,000,000/- without any deduction. Even going by the case as projected by the assessee, the amount of Rs.3.25 Crores is retained in an Escrow account and the right of the assessee has not been disputed and that amount was retained to cover four contingencies which are part of the indemnity clause and assuming certain payoffs were to be made from the retention money that will not in any manner alter the full and total consideration received by the assessee pursuant to the Business Sale Agreement and if such is the factual position, undoubtedly, the entire sale consideration had accrued in favour of the assessee during the assessment year under consideration. Even assuming that certain payments have been made from the amount retained in the Escrow account, it will not make or in any manner reduce the cost of acquisition.

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30.Thus, for all the above reasons, we are of the clear view that the Tribunal was right in allowing the appeal filed by the revenue and set aside the order passed by the CIT(A).

31.In the result, the tax case appeal, filed by the appellant-assessee, is dismissed and the substantial question of law is answered against the assessee. No costs.

(T.S.S., J.) (S.S.K., J.)
24.08.2021

Index: Yes
Speaking Order : Yes
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To

The Income Tax Appellate Tribunal,
Chennai.

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T.S.Sivagnanam, J.
and
Sathi Kumar Sukumara Kurup, J.

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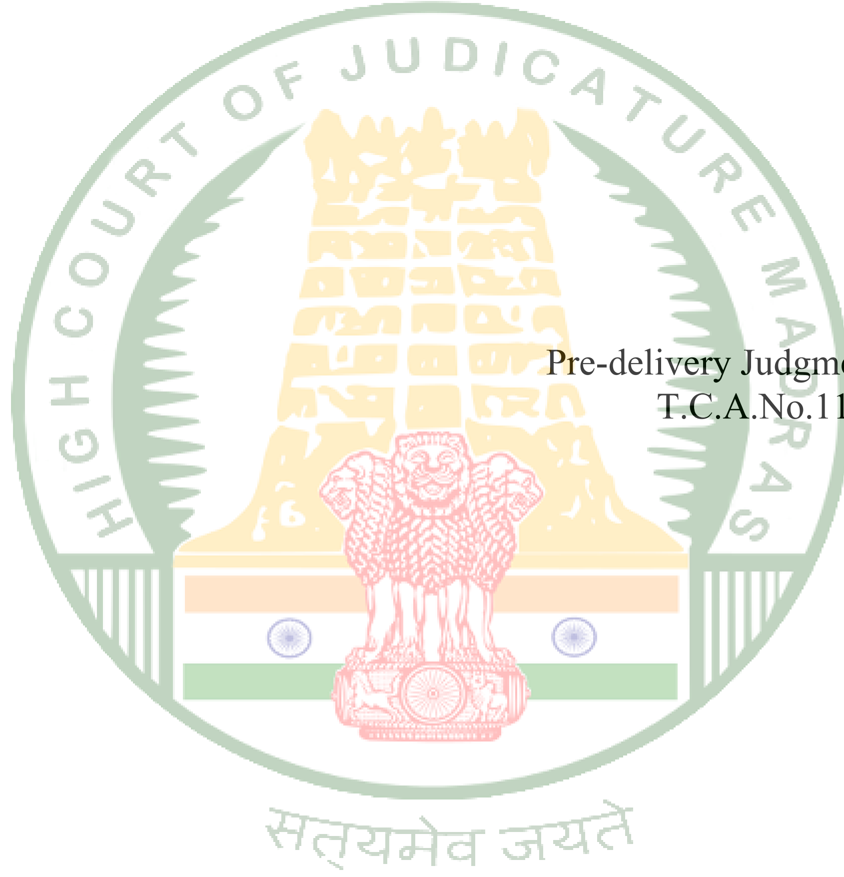

Pre-delivery Judgment made in
T.C.A.No.1112 of 2010

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