$~11 & 13

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

\+ **ITA 19/2016**

ABHISHEK GOVIL ..... Appellant

Through: Mr Arijit Prasad, Mr Narendra Kumar and Mr Rakesh Kumar, Advocates.

Versus

COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel with Mr Lakshmi Gaurung, Junior Standing Counsel.

AND

\+ **ITA 21/2016**

SOMYA SALWAN ..... Appellant

Through: Mr Arijit Prasad, Mr Narendra Kumar and Mr Rakesh Kumar, Advocates.

Versus

COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr P. Roy Chaudhuri, Senior Standing Counsel with Mr Lakshmi Gaurung, Junior Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% 06.01.2016

1. These appeals have been preferred by the Assessees under Section

260A of the Income Tax Act, 1961 (hereafter 'the Act') assailing a common order dated 23rd July, 2015 passed by the Income Tax Appellate Tribunal (hereafter 'ITAT') in the respective appeals preferred by the Assessees against two separate orders – dated 25th November 2013 and 26th December 2013 – passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'] rejecting their appeals preferred against the respective assessment orders passed in respect of Assessment Year 2009-10. Both the Assessees (Appellants herein) are owners to the extent of 1/3rd share each in the house property bearing no. Block C & D, 14A Factory Road, South of Ring Road, New Delhi.

2. The controversy in the present appeals relates to the receipt of maintenance charges pursuant to an agreement dated 1st April, 2008 entered into between the Assessees and the lessee of the premises in question. According to the Assessees, the maintenance charges are liable to be taxed under the head of income from house property. But, according to the Revenue, the Receipts on account of maintenance charges are taxable under the head of income from other sources.

3. Briefly stated, the relevant facts are that the premises bearing no.

Block C & D, 14A Factory Road, South of Ring Road, New Delhi (hereafter 'house property') is owned by the Assessees alongwith Mrs Parul Govil (wife of Mr Abhishek Govil, the appellant in ITA No. 19/2016). Each of them own 1/3rd undivided share in the house property.

4. The said house property has been leased to one M/s NE & MI Consultants & Engg. Pvt. Ltd. The three owners had executed the lease deed, leasing out the said premises at a monthly rent of Rs. 2,37,500/-. In addition, each of the lessors also entered into similar but separate agreements dated 1st April, 2008 for providing maintenance services with respect to the house property (hereafter 'maintenance agreement'). The relevant terms of the maintenance agreement are reproduced below:-

> "The First Party agrees and undertakes to provide the maintenance and other regular services to the Second Parry with respect to the Demised Premises in accordance with the following terms:
>
> 01. The First Party shall Carry out the work Connected with the general maintenance cleanliness and upkeep of the entire building in the Demised Premises including, staircases, corridors passages etc. on a daily basis and ensure that the Demised Premises is in good condition at all times during the term of the Lease Deed.
>
> 02. The First Party shall repair and renew and so far as appropriate, paint, whitewash and color the building in the

Demised Premises.

03. The First Party Shall Keep the Demised Premises furnished as it is at the time of handing over possession at all times during the term of the lease deed. The First Party hereby agrees to maintain the fitting and fixture.

04. Payment of Maintenance and service charges The Second Party shall pay to the First Party quarterly charges of Rs.287500/-

05. In the event of any dispute arising between the parties only the competent courts of Delhi shall have exclusive jurisdiction to try such disputes."

5. The Assessing Officer found that both the Assessees had received a sum of Rs. 9.5 lacs each as lease rental and Rs. 11.5 lacs as contractual receipts in terms of the maintenance agreement on account of maintenance charges from M/s Stem Infra Services Pvt. Limited whilst TDS on sum of Rs. 9.50 lacs was deducted at the rate of 16.6%, TDS on maintenance charges had been deducted at the rate of 2%.

6. The Assessees claimed that both the receipts, i.e. on account of rent as well as the maintenance charges, were liable to be taxed under the head of income from house property. The Assessees also claimed standard deduction under Section 24 of the Act on the income by way of rental as well as the

receipts on account of maintenance charges. The AO rejected the claim of the Assessees to treat the receipts on account of the maintenance agreement as rental income and taxed the same under the head of income from other sources. Accordingly, the statutory deduction under Section 24 of the Act on the maintenance charges was also disallowed by the AO.

7. Aggrieved by the assessment orders, the Assessees filed the appeals before CIT(A). The CIT(A) examined the maintenance agreement entered into by the Assessees pursuant to which they had received the maintenance charges. The CIT(A) also noted that the payer had deducted tax at source on the said charges at the rate as applicable to payments made to contractors. After considering the same, the CIT(A) concluded that the maintenance charges could not be considered as rental income and accordingly upheld the assessment orders.

8. The Income Tax Appellate Tribunal also did not find any fault with the decision of the AO as well as the CIT(A) and had rejected the appeal.

9. Mr Arijit Prasad, the learned counsel appearing for the Assessee submitted that a careful examination of the maintenance agreement entered into by the Assessees would indicate that the services agreed to be rendered

by them were not significant. He submitted that in substance, the maintenance charges were rental income. He contended that the form of the agreements should be ignored and if the substance of the maintenance agreements is considered, it would be seen that the said agreements were not for purposes of rendering any service and the consideration payable pursuant to the said agreements, was in reality lease rentals.

10. In our view, it is not open for the Assessees to claim that the express terms of agreements entered into by them should be ignored. The maintenance agreements expressly referred to the payments in question as "Maintenance and service charges". A plain reading of the agreements also indicates that the said charges were payable as consideration for providing services mentioned therein. Further, TDS was also deducted treating the said charges as payments to a contractor. The Assessees who are signatories to the said agreements cannot be permitted to claim the said agreements to be sham devices and contend that the substance of the maintenance agreements was different from what was expressly recorded therein. The CIT(A) as well as the Tribunal had taken note of the specific covenants of the maintenance agreements entered into by the Assessee and had concluded that the consideration received pursuant to the said agreements could not be

treated as rental income.

11. We find no infirmity with the aforesaid view. In any event no substantial question of law arises. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 06, 2016
RK