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

+ ITA 161/2025

PR. COMMISSIONER OF INCOME TAX-1Appellant

Through: Mr Vipul Aggarwal, SSC, Mr Akshat Singh, Ms Sakshi Shairwal, JSCs and Mr Gaoraang Ranjan, Advocates.

Versus

M/S BHARTI LAND LIMITED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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19.05.2025

CM APPL. 30551/2025 (condonation of delay in filing) and CM APPL. 30552/2025(condonation of delay in re-filing)

1. The Revenue has filed the present application seeking condonation of delay of 600 days in filing the present appeal. However, it is pointed out that there is a calculation error and the delay in filing is only 134 days. However, there is a delay of 480 days in re-filing the appeal.

2. For the reasons stated in the applications, the same are allowed. The delay in filing and re-filing are condoned.

ITA 161/2025

3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning an order dated 24.03.2023 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA



No.195/Del/2020 and ITA No.608/Del/2020.

4. The controversy involved in the said appeals relates to disallowance of expenditure under Section 40(a)(ia) of the Act which pertain to payment of external development charges [EDC] to Haryana Urban Development Authority [HUDA] without deduction of tax at source [TDS]; and the disallowance of certain expenditure as business loss.

5. The Assessee had preferred an appeal against the order dated 05.11.2019, passed by the Commissioner of Income Tax (Appeals)-2, New Delhi [CIT(A)] on the question whether the expenditure incurred by it on staff, office expenses etc. (which were of revenue in nature) were not allowable as business loss, for the reason that the Assessee has not received any revenue receipts, during the year.

6. The Assessing Officer [AO] had allowed the Assessee to capitalise such expenditure on the ground that there were revenue receipts during the previous year relevant to Assessment Year [AY] 2016-17. However, according to the Assessee, the said expenditure was revenue in nature and the Assessee had commenced its business.

7. The Assessee, thus, claimed that it was entitled to book such expenditure in its profit and loss account. The Assessee is, *inter alia*, engaged in the business of Real Estate Management. The Assessee had also set up an administrative structure for acting as a developed manager for building project, which would include conceptualization, construction and leasing/licensing of the given project in accordance with the business plan. However, it had not received any revenue receipts in respect of the said business during the FY 2015-16. The AO had not allowed these expenses



“since it is incurred before revenue realization of business”.

8. The learned ITAT had faulted the aforesaid proposition. Once it is accepted that the Assessee had commenced its business and incurred expenditure, which was revenue in nature, the fact that it had not realised any revenue from the business, would not be a ground for disallowance of such expenditure.

9. We find that no substantial question of law arises from the said conclusion of the learned ITAT.

10. Insofar as disallowance of expenditure under Section 40(a)(ia) is concerned, the learned ITAT had noted that there was no requirement for deducting TDS on EDC paid by the developer to HUDA. However, this view may not hold good in view of the recent decision of this Court in ***Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Ors.: 2024 SCC OnLine Del 939***. It is also noted that the CIT(A) had remanded the matter to the AO to ascertain whether the expenditure on account of EDC was booked as an expenditure in the profit and loss account. Concededly, if the EDC has not been booked as expenditure in profit and loss account, the disallowance on account of Section 40(a)(ia) would not arise. The Revenue had filed its appeal [ITA No.608/Del/2020] assailing the said decision. The learned ITAT had rejected the said appeal on the reasoning that since EDC has not been claimed as an expense in profit and loss account for the previous year relevant to AY 2016-17, the question of disallowance would not arise.

11. The learned counsel appearing for the Revenue submits that the learned ITAT has also precluded an examination as to whether, in fact, the



amounts had been charged to the profit and loss account.

12. Issue notice limited to the said question, returnable on 11.08.2025.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 19, 2025

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Click here to check corrigendum, if any