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

+ **ITA 185/2023 and CM APPL. 14928/2023**

PR. COMMISSIONER OF INCOME TAX-1 Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel with Ms Easha Kedian,
Advocate.

versus

M/S ANSAL PROPERTIES AND INFRASTRUCTURE LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

27.03.2023

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[Physical Hearing/Hybrid Hearing (as per request)]

1. This appeal concerns Assessment Year (AY) 2011-2012.
2. The challenge in the appeal is laid to the order dated 16.07.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. At the heart of the matter is the dispute concerning the correctness of the decision taken by the Tribunal in allowing the respondent/assessee to raise an alternate ground. Via the alternate plea/ground, the petitioner sought amortization of expenditure incurred in issuing shares amounting to Rs.9,46,22,358/- under Section 35D(2)(c)(iv) of the Income Tax Act, 1961 [in short, "the Act"].



4. The Tribunal permitted the respondent/assessee to take the alternate plea, while disagreeing with the respondent/assessee, that it could claim a deduction *qua* the aforementioned amount under Section 37 of the Act. The disagreement was based on the judgment rendered by the Supreme Court in ***Brook Bond India Ltd. v. CIT*** (1997) 225 ITR 798 (SC).

4.1 However, having regard to the fact, that the necessary ingredients for laying a claim made under Section 35D of the Act were available on record, the Court after applying the judgment of the Supreme Court in ***Shasun Chemicals & Drugs Ltd. v. CIT*** (2016) 388 ITR 1 (SC) allowed the amortization claim

5. Mr Sanjay Kumar, senior standing counsel, who appears on behalf of the appellant/revenue, says that one of the aspects, that had to be deliberated upon, was whether shares issued to Qualified Institutional Buyers (QIBs) can be treated as “public subscription”.

6. We find, upon perusing the impugned order, that the Tribunal has taken the view, that the shares issued to QIBs could be treated as public subscription.

6.1 In reaching this conclusion, the Tribunal has relied upon the judgment rendered by the coordinate benches situate at Mumbai and Hyderabad, in the matter of ***Yes Bank Ltd. v. Dy. CIT*** (2020) 117 taxman.com 974 (Mumbai-Trib.) and ***DCIT v. Deccan Chronicle Holdings Ltd.*** (2015) 60 taxmann.com 240 (Hyd-Trib.).

7. It appears, that no appeal has been preferred by the appellant/revenue, concerning these decisions rendered by the Tribunal.



7.1 Mr Kumar will return with definitive instructions, as to whether any appeal has been filed, and if not, the reason for not instituting the appeal.

8. Furthermore, Mr Kumar will place on record, the SCRA guidelines on QIBs.

9. List the appeal on 24.04.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 27, 2023 / tr

Click here to check corrigendum, if any

ITA 185/2023

page 3 of 3