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

+ ITA 495/2024 & CM APPL. 53892/2024 (109 Days Delay)

**PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX -1**

.....Appellant

Through: Mr. Debesh Panda, SSC along  
with Ms. Zehra Khan, Mr.  
Vikramaditya Singh, JSCs and  
Mr. Ojaswa Pathak, Adv.

versus

**M/S DUXTON HILLS BUILDERS PVT LTD**

.....Respondent

Through: Mr. Somil Agarwal and Mr.  
Dushyant Agrawal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

**13.09.2024**

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**CM APPL. 53891/2024 (Ex.)**

Allowed, subject to all just exceptions.

Application stands disposed of.

**ITA 495/2024 & CM APPL. 53892/2024 (109 Days Delay)**

1. Having heard Mr. Panda, learned counsel appearing for the appellant and Mr. Agarwal, who appears for the respondent assessee on advance notice, we take note of the submission of the appellant that even if the findings of the Income Tax Appellate Tribunal [‘ITAT’] with respect to the transaction and securities not being sham were to be accepted, it clearly erred in failing to undertake a further characterization of whether the loss would be liable to be treated as



capital or revenue in nature.

2. Mr. Agarwal, learned counsel appearing for the respondent, however, submits that neither before the Assessing Officer [‘AO’] nor before the Commissioner of Income Tax (Appeals) [‘CIT(A)’] was the asserted claim of the assessee of the loss being capital in character ever disputed. He, however, prays for time to address further submissions.

3. Consequently, let the appeal be re-notified for 08.11.2024.

**YASHWANT VARMA, J**

**RAVINDER DUDEJA, J**

**SEPTEMBER 13, 2024/RW**