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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 208/2016**

PR. COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr Raghvendra Singh, Junior Standing counsel.

versus

DLF GARDEN CITY INDORE PVT. LTD. (FORMERLY AYUSHI BUILDERS & DEVELOPERS P. LTD.) ..... Respondent
Through: Ms Kavita Jha with Ms Roopali Gupta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **27.04.2016**

1. This appeal by the Revenue is against the order dated 4th September, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1302/Del/2013 for the Assessment Year ('AY') 2008-09. The Revenue has urged three issues before the Court.

2. The first issue is whether the ITAT erred in law in deleting the addition of Rs.43,26,000/- on account of legal and professional expenses made by the Assessing Officer ('AO') but deleted by the Commissioner of Income Tax ['CIT(A)']?

3. Mr. Raghvendra Singh, Junior Standing counsel for the Revenue submits that for the purposes of Section 40(a) (ia) of the Act, the onus was on the

Assessee to show that the above expenses incurred were reasonable and not excessive.

4. However, the Court finds that in the assessment order dated 27th December 2010 the AO did not consider the above aspect. The AO was of the view that in the absence of any supporting evidence filed by the Assessee it could not be ascertained whether the payments made on account of the above expenses to M/s DLF Home Developers Ltd. actually related to the business of the Assessee. Before the CIT(A), it was pointed out by the Assessee that the payment was part of the Tax Audit Report and had been duly verified by the Tax Auditors. The CIT (A) accepted the Assessee's plea that the AO has not brought on record any material to show that the payment to DLF Home Developers Ltd. was not genuine. Therefore, the CIT(A) deleted the addition. This finding has been affirmed by the ITAT. In the above circumstances, the Court declines to frame a question on this issue.

5. The second question urged concerns the deletion of the addition made by the AO of Rs. 80,53,742/- on account of Internal Development Costs ('IDC').

6. At the outset, it was pointed out by Ms Kavita Jha, learned counsel appearing for the Assessee, that the IDC claimed by the Assessee has been consistently allowed by the ITAT since AY 1995-96. She also pointed out that for the AY 2004-05, the question urged by the Revenue as regards ITC (in ITA No. 264/2010) was not admitted by the Court.

7. However, Mr Raghvendra Singh urged that the question as regards ITC raised by the Revenue in the present case is different from that raised in the other AYs where no question was framed by the Court. According to him, the AO disallowed the ITC since the Assessee was unable to produce the relevant documents to justify the incurring the IDC for the AY in question.

8. The CIT(A) noticed in its order dated 14th December 2012 that the Assessee had been consistently adopting the percentage of completion method and has budgeted for IDC as part of the project cost. It is seen that even before the AO, the Assessee had produced supporting documents in respect of the IDC apart from a copy of the balance sheet. The AO's line of inquiry was not whether the budgeted IDC was justified in the facts and circumstances of the case but whether there were vouchers/documents substantiating the incurring of the IDC. Given the fact that the Assessee was adopting the percentage of completion method and had explained the basis of budgeting for IDC, based on the matching concept of apportioning costs to the corresponding sales, the inquiry by the AO was obviously inconsistent with the case put forth by the Assessee.

9. In the circumstances, the ITAT was justified in deleting the addition made by the AO on this aspect. The Court, therefore, declines to frame a question on this issue.

10. The third issue concerns the deletion of an addition of Rs. 10,00,000/- made by the AO under Section 40(a)(ia). It is not in dispute that this is a typographical error and, therefore, no substantial question of law arises.

11. Accordingly, the appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 27, 2016
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