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

\+ ITA 586/2018

PRINCIPAL COMMISSIONER OF INCOME TAX - 7
..... Appellant

Through Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel.

versus

PADMINI INFRASTRUCTURE (P) LTD. ..... Respondent

Through Mr. Piyush Kaushik, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **15.05.2018**

Two questions are urged by the Revenue in its appeal under Section 260A of the Income Tax Act ('the Act'). Firstly, whether the reckoning of balconies raised in respect of housing development that resulted in each unit exceeding 1000 sq. ft. is entitled to the relief under Section 80IB(10)(c)of the Act and Secondly, whether the conditions with respect to the commencement of the project on or after 01.10.1998 is linked with the approval granted by the local authority or actual development.

In respect of the first question, the CIT(A) with concurrent findings was of the view that the balconies raised could not be taken into account for calculating 1000 sq.ft. limit prior to 01.04.2005. This court finds no reason to interfere with such logic.

As far as the second issue with respect to the commencement of the project is concerned, again we find that the concurrent findings are based upon the actual commencement of the project. Though, the Revenue urged that the date of approval is determinative and commencement has to be reckoned from that period, this court is of the opinion that the ITAT cannot be faulted on this aspect for the simple reason that mere securing the approval does not lead to any step towards development. Rather that may be the foundation for various steps that may ultimately lead to obtain finances and starting construction activity. Therefore, it is the actual date of construction which is determinative.

For the foregoing reasons, no substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 15, 2018
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