IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.197 OF 2017

Pr. Commissioner of Income-Tax-15 … Appellant
V/s.
M/s Reliance Home Store Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.P.C.Tripathi i/by Mr.Raj B. Darak for the Respondent.

CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.
DATE : JUNE 03, 2019.

P.C.:-

1. This appeal is filed by the revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). Following questions are presented for our consideration:-

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in deleting disallowance in respect to expenses incurred in the preoperative period towards the project development cost when the claim of the assessee is of dual nature that is in the books of accounts claiming it as capital expenditure and for the taxation as revenue expenditure?
> (ii) Whether on the facts and in the circumstances of the case and in law, whether the Tribunal was justified in allowing the expenses incurred u/s 37(1)

of the Act without appreciating that admittedly and also as accounted by assessee in its books of account, the expenses were preoperative in nature and hence not admissible as expenditure u/s 37(1) of the Act thereby allowing the assessee undue benefit and inadmissible benefit u/s 37(1) of the Act, giving rise to a substantial question of law as envisaged by the Hon'ble Supreme Court in the case of Vijay Kumar Talwar vs. CIT in 330 ITR (1) (SC)?"

2. Perusal of the impugned judgment of the Tribunal would show that in order to delete the disallowance, the Tribunal had relied upon its own judgment in case of this very assessee for the earlier assessment years. The revenue had carried the issue in appeal before the High Court in Income Tax Appeal No.892 of 2014 and Income Tax Appeal No.947 of 2016. These appeals were dismissed by orders dated 5th July, 2017 and 21st January 2019 respectively. No question of law therefore arises. Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

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