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

\+ ITA 65/2019, CM APPL. 3709/2019, CM APPL. 3814/2019

THE PR. COMMISSIONER OF INCOME TAX -3 ..... Appellant

Through: Mr. Ruchir Bhatia, Advocate with Mr. Puneet Rai, Advocate for petitioner.

versus

DLF HOME DEVELOPERS LTD. ..... Respondent

Through: Ms. Kavita Jha, Ms. Devika Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **25.01.2019**

The revenue urges three questions of law in respect of the following issues:

1. with respect to disallowance under Section 14A;
2. in regard to payment of brokerage expenses,
3. Whether the payment received towards membership of club is to be taxed in the given year of its receipt.

As far as first issue – disallowance under Section 14A is concerned, the Court notices that the exempted income in this case is ₹3.17 lakhs. The Assessing Officer had disallowed ₹59 crores which was reduced to ₹8 crores by the CIT(A). Following the decision of this court in Commission of Income Tax vs. Joint Investment, 372 ITR 694, the ITAT restricted the disallowance to the income earned i.e. ₹3.17 lakhs. So, there is no infirmity in this approach. No question of law arises.

So far as the question of brokerage is concerned, the issue stands covered in ITA No.54/2019 decided on 23.01.2019. The court had then observed as under: -

> *In DLF Universal Limited (supra), this Court after framing questions with respect to allowance under brokerage and commission claimed by the assessee in the context of percentage completion method adopted by it held as follows:*
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> > *"8. The assessee had claimed ₹61,78,414/- as expenditure towards brokerage and commission. The amount was paid to its brokers for booking and sale of certain properties during the assessment year. The Assessing Officer disallowed this expenditure on the ground that during the year the conveyance of the sale deeds were not executed. The CIT (A) and ITAT accepted the assessee's contentions and set aside the disallowance. At the outset, we notice that the assessee's explanation clearly stated is as follows: -*
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> > *"In this connection it is submitted that brokerage and commission is not a direct expenses for acquiring to a specific property but it is in fact financial cost/selling expenses and is fully allowable in the year in which the same is incurred. The property brokers who have rendered their services to obtain advances on booking of properties are entitled to the payment of commission in terms of agreement entered into with them. Therefore, the expenses incurred on brokerage and commission on booking of properties being a finance/selling expenses are allowable in full. In this connection your attention is invited to the various orders of CIT (A) on this point where in the addition on account has been deleted. Your attention is also drawn to order dt. 20.7.1994 of Hon'ble ITAT, New Delhi for the assessment year 1983-84 of the Income-tax wherein*

> *an additional ground taken by the Deptt. for inclusion of the amount of brokerage and commission in the sales promotion expenses u/s 37(2)(a) have been dismissed. We understand that the Deptt. has not filed any reference application in the High Court against this order."*
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> *9. It is not disputed by the Revenue that for the other years, the assessee's treatment of such expenses has been in his favour and the Revenue has not chosen to challenge it. Even otherwise, we are of the opinion that such expenditure has to be allowed. The question of law is consequently answered in favour of the assessee and against the Revenue."*

The third issue with respect to membership receipt towards club membership, is covered by another decision of this court in ITA 180/2012, *Commissioner of Income Tax vs. DLF Commercial Developers Ltd.*, decided on 30.03.2012. It was held that the treatment in the concerned year of receipt is in accordance with the principles of accountancy. No question of law therefore arises.

In view of the above discussion, this court finds that no substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 25, 2019/akv