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

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\+ **ITA 488/2019**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -3.. Appellant
Through: Mr Ruchir Bhatia, Advocate.

versus

PUMA REALTORS PVT. LTD ..... Respondent
Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER

% **13.05.2019**

CM 22698/2019 (delay)

1. For the reasons explained in the application, the delay in filing the appeal is condoned and the application is allowed.

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2.This is an appeal by the Revenue against the order dated 12th November, 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1734/DEL/2015 for the Assessment Year ('AY') 2011-12 and Cross Objections ('CO') No.300/Del./2015 for the AY 2011-12.

3. The Revenue seeks to question the impugned order of the ITAT to the extent that it treated the expenditure claimed by the Assessee / Respondent

towards advertisements and business proportion as ‘indirect revenue expenditure’ and allowed it as its business expenditure under Section 37 (1) of the Income Tax Act, 1961 (‘Act’).

4. The Assessee had in its return of income declared a loss and the return was picked up for scrutiny. The Assessee had launched two residential projects and had started booking and sale of residential units. It adopted the project completion method for recognition of revenue. Since the project during the year in question had been completed to an extent of less than 30%, the revenue receipts were shown as advance from customers under the head ‘current liability’. The contention of the Revenue was that the expenditure to an extent of Rs.1,72,25,470/- should have been taken as ‘work in progress’ instead of claiming it as ‘indirect expenses’ in the profit and loss account.

5. With the Assessing Officer (‘AO’) having not agreed with the Assessee on this aspect, an appeal was filed before the Commissioner of Income Tax (Appeals) [‘CIT (A)’] who agreed with the Assessee by following the guidance note of the Institute of Chartered Accountants of India (‘ICAI’) as regards accounts of real estate transactions. It was held that the AO was in error in taking all the selling and market expenses to work in progress.

6. The Revenue’s appeal has been dismissed by the ITAT by observing as under:

> “6. After considering the finding given, the impugned order and arguments placed by the, Ld. DR, we find that it is an undisputed fact that assessee has incurred expenditure of Rs.1.95,98010/- towards advertisement and business promotion

> expenses which was in the nature of advertising and sales promotion for launching of, its residential project. and attracting the customers. AO has treated expenditure to the extent of Rs. 1,72,25,470/- to be part of work in progress because assessee has not disclosed any income from such a project. It is further not in dispute that assessee has not disclosed any income from such a project and that assessee has incurred this expenditure to popularise its project and to get the booking for ultimate sale of the residential units. These are purely indirect not related to the cost of the project and therefore, same could not have been taken the project as work-in-progress. Such an advertisement expenditure on account of brand promotion advertisement, etc are indirect revenue expenditure which are otherwise allowable as business expense u/s 37 (1). As per the . guidance note of accounting for real estate issued by lCAI, selling cost is not included in the cost of construction and development and since it is an indirect cost, therefore, it has to be allowed irrespective of any link with the construction of work in-progress. The details and invoices of incurring of these expenditures too have been admitted by the AO. Ld. CIT (A) after taking note of such guidance note of ICAI and also the accounting standard has given a categorical finding that selling and marketing expenses being indirect expenditure cannot be taken to the work in progress and therefore such a disallowance made by the AO treating it to part of work-in-progress has rightly been deleted by him. Accordingly 'bider' or Ld. CIT (A) on this score is upheld."

7. Having heard learned counsel for the Revenue, this Court is satisfied that the test adopted by the CIT (A) was the right one. Further, the guidance note of the ICAI which lays down the accounting standards to be followed in such circumstances has been correctly applied, both by the CIT (A) as well as the ITAT.

8. No substantial question of law arises for consideration. The appeal is

accordingly dismissed. No costs.

S.MURALIDHAR, J.

I.S.MEHTA, J.

MAY 13, 2019
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