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

\+ ITA 107/2020

PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL)-3,

..... Appellant

Through: Ms.Vibhooti Malhotra, Senior Standing Counsel with Mr. Shailender Singh, Advocate.

versus

M/S INTIME PROMOTERS PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **18.02.2020**

CM APPL. 6383/2020 (exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

ITA 107/2020 & CM APPL. 6384/2020 (delay)

3. There is delay of 150 days in filing the appeal.

4. We have heard learned senior standing counsel for the Revenue on merits. Since we are not inclined to interfere in the present appeal, we do not deem it appropriate to pass any order on the application seeking condonation of delay.

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5. The revenue is in appeal against the order dated 29.03.2019 passed by the Income Tax Appellate Tribunal, Delhi-C Bench, New Delhi , dismissing the appeal preferred by the revenue in ITA No. 3157/DEL/2014 relating to Assessment Year (AY) 2005-06. By the impugned order, the Tribunal has accepted the appeal of the respondent-Assessee and rejected the appeal preferred by the revenue.

6. The assessee filed the return of income declaring total income of Rs. 6,00,720/-. The same was processed under Section 143(1) and the case was selected for scrutiny. Notice under Section 143(2) was issued on 11.10.2006 and a questionnaire was issued to the assessee. During the course of assessment proceedings, a survey operation was conducted on 20.02.2007 on Taneja Developer and Infrastructure Ltd. During the said survey, certain documents were seized. It appears that three loose sheets were recovered during the said survey which belonged to the assessee. The said sheets contained particulars "*broker-wise due as on 12.01.2005*". The said sheets contained the tabulation, giving the name of the broker and against the name of the broker the amount was indicated. The Assessing Officer (AO) computed the same at Rs.1,46,55,94,222/-. The AO held that the assessee had not reflected the said amount, as received, in its books of account and consequently, proceeded to add the said amount as the income of the assessee for the AY 2005-06. The plea of the assessee that the said amount had not been received in the AY 2005-06 and that the same was recoverable in subsequent years, and as a matter of fact, an amount of Rs.1,42,48,36,949/- was indeed recovered in the subsequent financial years was not appreciated by the AO. The assessee then preferred the appeal

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before the CIT (A) who called for a remand report and accepted the appeal preferred by the respondent-Assessee. The Tribunal, as aforesaid has rejected the appeal preferred by the revenue.

7. Ms. Malhotra, senior standing counsel submits that the respondent-Assessee does not dispute that the loose sheets recovered during survey operations from Taneja Developers and Infrastructure Ltd. indeed belong to the assessee. She submits that the broker wise dues reflected in the said loose sheets was the income of the assessee during the assessment year in question.

8. Having heard Ms. Malhotra and perused the entire record, including the assessment order, the order passed by the CIT (A) and ITAT, we do not find any reason to interfere in the impugned order. The documents recovered during the survey operation have to be read as they exist and nothing can be added to them. The said documents disclose what they state. The said documents reflect "broker-wise due as on 12.01.2005". This clearly means that the tabulation reflected the amount recoverable by the assessee from the named brokers, as on 12.01.2005, and it did not reflect the amount actually received or accrued. The assessee, admittedly, is a real estate developer and its explanation that it had received booking amount of Rs.17 crores, which was reflected in the book of accounts to the AY 2005-06, and that in respect of the said bookings, further amounts were to be received in subsequent years was completely a plausible explanation. Indeed, the assessee disclosed in its books of accounts further receipt of Rs.1,34,59,86,447/- in the subsequent years, and the assessee also reflected the balance amount due as Rs.7,88,50,502/-.

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9. In the aforesaid circumstances, we are of the view that the AO was not justified in making addition of Rs.1,46,55,94,922/- on account of sales.

10. The appeal is accordingly dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 18, 2020

v

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