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

\+ ITA 50/2026, CM APPL. 5129/2026 & CM APPL. 5130/2026

PR COMMISSIONER OF INCOME TAX DELHI 7.....Appellant

Through: Mr. Sunil Agarwal, SSC, Ms. Monica Benjamin, Mr. Gibran Naushad, JSCs, Mr. Rohit Chakraborty and Ms. Nancy Jain, Advs.

versus

R D VERMA CO PVT LTD .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

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

% 13.04.2026

1. By way of present appeal under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as the 'Act of 1961'*), the appellant has challenged the order dated 28.04.2025 passed by the Income Tax Appellate Tribunal, Bench F, Delhi in ITA No. 161/Del/2024 (*hereinafter referred to as the 'Tribunal'*) pertaining to Assessment Year 2017-18.

2. The substantial question of law as proposed by the appellant is as under:-

> *"Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not appreciating that the issue of payment of compensation to the flat buyers to the extent of Rs. 5 per sq ft per month is under challenge before NCDRC*

> *consideration and liability thereof is unascertained and is liable to be disallowed as per provisions of section 37 of the Income Tax Act 1961?"*

3. Succinctly stated, the facts are that the assessee is a real estate developer, who had developed multi-storied residential flats in Sector-52, Gurugram.

4. The agreements entered into between the assessee and the flat buyers, contained a clause that the developer (the assessee in the instant case) has to give possession of the flats within 30 months from the date of commencement of the construction of the flats and if the same is delayed beyond the stipulated period, then the developer shall pay compensation to the flat buyers @ Rs.5/- per square feet per month for the period of delay.

5. Since, the possession of the flats got delayed beyond the stipulated period, in terms of the agreement, a compensation @ Rs.5/- per square feet per month became payable, which liability was accepted by the assessee and a provision for the same was made in the books of accounts (amounting to Rs.17,67,63,000/-). The Assessing Officer took the same as unascertained and contingent liability as the assessee company was contesting the amount claimed by the flat buyers before the National Consumer Dispute Redressal Commission by contending that they are entitled for higher amount as interest on such compensation calculated @ Rs.5/- per square feet per month.

6. The Tribunal while rejecting the Department's appeal held that the compensation @ Rs.5/- per square feet per month, which was agreed to by the respondent (the builder), was an admitted liability and thus cannot be held a contingent liability.

7. Mr. Sunil Agarwal, learned Senior Standing Counsel argued that the Tribunal has erred in treating the amount of Rs. 17,67,63,000/- as an accrued liability. In this regard, he argued that the consumers/buyers were not ready to accept this amount (Rs.5/- per square feet per month) and they have made their claims for interest thereupon and unless and until the final amount is determined by the Consumer Court or competent Court, the total liability of the respondent-assessee was always uncertain. He thus argued that the Assessing Officer (AO) has rightly disallowed the provision of amount of Rs. 17,67,63,000/- by holding that the liability is still a contingent liability.

8. Mr. Agarwal relied upon the judgment dated 12.03.1974 passed by Hon'ble the Supreme Court in case of **Union of India Vs. Raman Iron Foundry** reported in (1974) 2 SCC 231 and submitted that Hon'ble the Supreme Court that in the case of breach of contract observed that until the liability is determined by the Court or by mutual agreement between the parties, it cannot be said to be an accrued liability.

9. He relied upon para no.11 of the aforesaid judgment, which is reproduced hereinfra:-

> *"11. Having discussed the proper interpretation of clause 18, we may now turn to consider what is the real nature of the claim for recovery of which the appellant is seeking to appropriate the sums due to the respondent under other contracts. The claim is admittedly one for damages for breach of the contract between the parties. Now, it is true that the damages which are claimed are liquidated damages under Clause 14, but so far as the law in India is concerned, there is no qualitative difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Section 74 of the Indian Contract Act eliminates the somewhat elaborate refinements made under the English common law in distinguishing between stipulations providing for payment of liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the*

parties: a stipulation in a contract in terrorem is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of penalty, and according to this principle, even if there is a stipulation by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. It, therefore makes no difference in the present case that the claim of the appellant is for liquidated damages. It stands on the same footing as a claim for unliquidated damages. Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. That is not an actionable claim and this position is made amply clear by the amendment in Section 6(e) of the Transfer of Property Act, which provides that a mere right to sue for damages cannot be transferred. This has always been the law in England and as far back as 1858 we find it stated by Wightman, J., in Jones v. Thompson [(1858) 27 LJ QB 234 : 120 ER 430] "Exparte Charles and several other cases decide that the amount of a verdict in an action for unliquidated damages is not a debt till judgment has been signed". It was held in this case that a claim for damages does not become a debt even after the jury has returned a verdict in favour of the plaintiff till the judgment is actually delivered. So also in O'Driscoll v. Manchester Insurance Committee [(1915) 3 KB 499 : 113 LT 683] Swinfen Eady, L.J., said in reference to cases where the claim was for unliquidated damages: "…in such cases there is no debt at all until the verdict of the jury is pronounced assessing the damages and judgment is given". The same view has also been taken consistently by different High Courts in India. We may mention only a few of the decisions, namely, Jabed Sheikh v. Taher Mallik [AIR 1941 Cal 639 : 197 IC 606 : 45 Cal WN 519] , S. Milkha Singh v. N.K. Gopala Krishna Mudaliar [AIR 1956 Punj 174] and Iron and Hardware (India) Co. v. Firm Shamlal and Bros [AIR 1954 Bom 423, 425-26 : ILR 1954 Bom 739 : 56 Bom LR 473] . Chagla, C.J. in the last mentioned case, stated the law in these terms: (at pp. 425-26)

> *"In my opinion it would not be true to say that a person who commits a breach of the contract incurs any*

> *pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party.*
> *As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant."*

This statement in our view represents the correct legal position and has our full concurrence. A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it under clause 18, to recover the amount of such claim by appropriating other sums due to the contractor. On this view, it is not necessary for us to consider the other contention raised on behalf of the respondent, namely, that on a proper construction of clause 18, the purchaser is entitled to exercise the right conferred under that clause only where the claim for payment of a sum of money is either admitted by the contractor, or in case of dispute, adjudicated upon by a court or other adjudicatory authority. We must, therefore, hold that the appellant had no right or authority under clause 18 to appropriate the amounts of other pending bills of the respondent in or towards satisfaction of its claim for damages against the respondent and the learned Judge was justified in issuing an interim injunction restraining the appellant from doing so."

10. He further submitted that as per Section 73, 74 and 75 of the Indian Contract Act, 1872, unless damages or compensation is determined by the parties or by the competent Court, the liability will continue to be a contingent liability.

11. Heard learned counsel for the appellant.

12. According to us, the issue involved before us should not detain us more. So far as the amount of Rs.17,67,63,000/- is concerned, the same relates to a provision made by the respondent calculated @ Rs.5/- per square feet per month, which had been agreed to be paid by the respondent-assessee in express term as a condition of the agreement.

13. According to us, such an amount (Rs. 5 per square feet per month) is an accepted or agreed amount and thus an accrued liability, as the project indisputably got delayed. Once the project exceeds the timeline assured or rather guaranteed in the contract, the respondent's liability was automatic by virtue of the terms of the contract.

14. The demur on the part of the flat buyers to not accept this amount was only with a view to get some extra amount and/or an amount more than Rs. 5/- per square feet per month on the count of interest and therefore, it cannot be said that the liability to the extent of Rs. 5/- per square feet per month was in any manner in fluid.

15. So far as an amount of Rs. 5/- per square feet per month is concerned, that was an accrued liability, the moment project got belated and which liability the respondent-assessee had admitted to pay.

16. And since the respondent had, in principle, accepted this liability and made provision, there was no legal or accounting error in making provision. Irrespective of the day, when such amount shall be paid, the liability for the relevant period calculated @ Rs.5/- per square feet per month is deductible from each years' income.

17. The consumers might be claiming an amount in addition to Rs. 5/- per square feet per month and simply because additional amount (in the form of

interest) was not accepted by the respondent-assessee and the purchasers stuck to the demand of additional amount, it cannot said that the liability was contingent.

18. What is in dispute is that the flat buyers' right to get an additional amount in the form of interest/compensation, which will be ultimately decided by the Consumer Court or any other competent Court (if any).

19. So far as extra amount/interest part is concerned, the respondent-assessee neither claimed it as an expenditure nor it is an issue before us.

20. For the reasons aforesaid, we agree with the view, taken by the Tribunal. The appeal therefore fails.

21. All the pending applications stand disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 13, 2026/*cd*