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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 161/2025**
PR. COMMISSIONER OF INCOME TAX-1Appellant

Through: Mr. Vipul Agarwal, SSC, Ms. Sakshi Shairwal and Mr. Akshat Singh, JSCs and Mr. Gaoraang Ranjan and Ms. Harshita Kotru, Advs.

versus

M/S BHARTI LAND LIMITEDRespondent

Through: Mr. Rohit Jain and Mr. Saksham Singhal, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **12.01.2026**

1. By way of the present appeal, the appellant-Income Tax Department has challenged the order dated 24.03.2023 passed by Income Tax Appellate Tribunal, (ITAT) Delhi Branch 'A', New Delhi whereby, the department appeal was rejected while the appeal filed by the respondent-assessee was allowed.
2. The short issue in the instant case was in relation to adding back the amount of 30% of Rs. 44,26,40,000/-, being Rs. 13,27,92,000/- to External Development Charges (*hereinafter referred to as the 'EDC'*).
3. Vide order dated 28.12.2018, the same was disallowed by the Assessing Officer(AO) *inter alia*, observing that since the respondent-assessee had not deducted tax on the payment made to Haryana Urban Development Authority (*hereinafter referred to as HUDA*), the same is liable to be added back to the income of the respondent-assessee.
4. Learned counsel for the appellant-Department argued that against the



order dated 28.12.2018, passed by the AO, the assessee had preferred an appeal being Appeal No. 10211/18-19 before the Office of the Commissioner of Income Tax (*hereinafter referred to as 'CIT(A)'*), who had partly allowed the appeal and remanded the matter back to the AO with the directions to verify the fact as to whether 30% of Rs. 44,26,40,000/- being Rs. 13,27,92,000/- has been claimed as a expenditure/deduction or not and if the same has not been claimed as an expenditure debited in the Profit and Loss (*hereinafter referred to as 'P&L'* account). No addition be made.

5. Against the above referred order passed by the CIT(A), both the parties filed above referred appeals before the ITAT. The ITAT disposed of both the appeals and held in favour of respondent-assessee.

6. Learned counsel for the appellant argued that assessee had added the amount of Rs. 44, 26,40,000/- in the closing stock and as such the same has been reflected in the P&L account and therefore, firstly the finding recorded by the ITAT was erroneous and secondly, the ITAT ought to have upheld the order passed by the CIT(A) whereby the CIT(A) had directed the AO to revisit and verify the fact as to whether the amount in question has been claimed as an expenditure in the P&L account or not.

7. Mr. Rohit Jain, learned counsel for the respondent on the other hand argued that the ITAT has committed no error of law. Any remand, which the CIT(A) had made, was not required inasmuch as the assessment order dated 28.10.2018 itself shows that the entire expenditure has been disallowed by him by observing that there is no income and the same related prior to the period when its business commence.

8. Learned counsel further submitted that since the assessee had not claimed the amount of 30% of Rs. 44,26,40,000/- as an expenditure, which



is evident not only from the P&L account but also from para no.5.1 of the assessment order dated 28.12.2018, no addition can be made. He argued that an amount, which has not been claimed as an expenditure, cannot be disallowed.

9. Heard learned counsel for the parties and perused the material. A simple look at para no.5.1 of the assessment order shows that the AO had disallowed all the expenditure incurred by the petitioner, as no revenue/ income was earned/ accrued by the assessee.

10. The P&L account does not show that the amount of External Development Charges (EDC) paid to HUDA was claimed as an expenditure. A perusal of provisions contained in Section 40A(i) of the Act of 1961, clearly shows that incase the TDS is not deducted from the payment made to any person, the expenditure in this regard shall be disallowed.

11. In the instant case, the amount of Rs. 44,26,40,000/- was neither claimed as an expenditure nor was it allowed. Hence, there arises no question of disallowance. Disallowance by its very name indicates and/or suggests that an expenditure or amount can be disallowed only if it has been allowed.

12. Needless to observe that the first issue regarding the business loss had already been held against the appellant Department vide order dated 19.05.2025. As such the appeal filed by the Department stands dismissed in its entirety.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 12, 2026/cd