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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 07.12.2023+ **ITA 185/2023**

PR. COMMISSIONER OF INCOME TAX-1 Appellant
 Through: Mr Sanjay Kumar, Sr. Standing Counsel.

versus

M/S ANSAL PROPERTIES AND INFRASTRUCTURE LIMITED Respondent
 Through: Mr Tapas Ram Mishra, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA
 [Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2011-12.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 16.07.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
3. On merits, the issue that arose for consideration before the Tribunal was whether the expenditure amounting to Rs. 9,46,22,358/- incurred in connection with the issue of equity shares to Qualified Institutional Buyers (QIBs), qualifies for a deduction under Section 35D(2)(c)(iv) of the Income-tax Act, 1961 [in short, “Act”].
4. The respondent/assessee had amortized the expenditure over five (5) years, by taking recourse to the provisions of Section 35D(2)(c)(iv) of the



Income-tax Act, 1961 [in short, “the Act”].

5. In the period in issue, 1/5th of the aforementioned amount i.e., 9,46,22,358/- was claimed as an expense. In absolute terms, the amount claimed as deduction in AY 2011-12 by the respondent/assessee was Rs. 1,89,24,471/-.

6. The appellant/revenue also sought to deny the deduction to the respondent/assessee on the ground that the issue of shares to QIB was not a “public subscription”.

7. Given the fact that in the period in issue i.e., AY 2011-12, the expense claimed was only Rs.1,89,24,472/-, in our opinion, the tax effect would be less than the prescribed threshold i.e., Rs. 1 crore.

8. Given this position, the appeal is closed with liberty to the appellant/revenue to approach the court, for revival of the appeal, if they receive instructions to the contrary.

8.1 We have noted this aspect Mr Sanjay Kumar, learned senior standing counsel, has been unable to obtain instructions from the concerned Assessment Officer (AO) despite the opportunity.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 7, 2023 / tr