आयकर अपीलीय अधिकरण, बेंगलुरू पीठें, बेंगलुरू
INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCHES, BANGALORE

BENCH: B

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT AND SHRI SOUNDRARAJAN K., JUDICIAL MEMBER

ITA No. 578-Bang-2026 (निर्धारण वर्ष/Assessment Year: 2018-19)		
SOBHA LIMITED MARATHAHALLI, OUTER RING ROAD, BELLANDUR POST, BENGALURU-560103, KARNATAKA	**Vs.**	**DEPUTY COMMISSIONER OF INCOME TAX,** CENTRAL CIRCLE-1(4), CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU-560001, KARNATAKA
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**AABCS7723E**
अपीलार्थी द्वारा/Appellant represented by:		**Sri. V. Srinivasan – Advocate**
प्रत्यर्थी द्वारा/Respondent represented by:		**Sri. N. S. Shashidhara - CIT**

सुनवाई की तारीख / Date of conclusion of hearing:	**23-Jul-2026**
घोषणा की तारीख / Date of pronouncement:	**15-Oct-2026**

आदेश / ORDER

PER SHRI PRASHANT MAHARISHI, VICE PRESIDENT

1. This appeal by the M/s Sobha Limited [The Assessee/ Appellant] is directed against the appellate order dated 22 September 2025 passed by the

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Commissioner of Income-tax (Appeals)-11 [CIT(A)], dismissing the Assessee's appeal against the assessment order dated 31 December 2019 passed under section 143(3) read with section 153D of the Income-tax Act, 1961 ("the Act") by the Deputy Commissioner of Income-tax, Circle-1(4), Bengaluru ("the AO"), determining the Assessee's total income at Rs. 52,48,46,622/-. The Assessee's sole grievance is that the AO erred in disallowing Rs. 8,07,80,522/- under section 37(1) of the Act towards VAT/GST paid in respect of the landowner's share of the built-up area, on the ground that the expenditure was not incurred wholly and exclusively for the purposes of the Assessee's business, and that the CIT(A) erred in confirming the disallowance.

2. The Assessee has raised the following grounds of appeal:

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the disallowance of a sum of Rs.8,07,80,522/- u/s.37[1] of the Act in respect of the VAT/GST payments relating to the landowner's share of built-up area on the ground that the said expenditure was not laid out wholly and exclusively for the purpose of business under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] erred in holding that the claim for deduction of the landowner's share of VAT/GST that was not recovered from the landowner on account of commercial expediency due to the clause enabling the landowner to claim compensation for delay in completion under the Joint Development Agreement was not established or acceptable under the facts and circumstances of the appellant's case.

4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

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5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. Briefly, a search and seizure action under section 132 of the Income-tax Act was initiated on 2 August 2017 in the case of Shri Doddahalahalli Kempegowda Shivakumar and his group concerns, pursuant to a warrant of authorisation. The search also covered the residence of Mr. D. V. Harish at No. 1072, Tower C, Mantri Green Apartment, Malleswaram, Bengaluru, where documents belonging to and containing information relating to M/s Sobha Limited were found and seized. Further, during a survey under section 133A conducted on 4 February 2019 at the premises of M/s Sobha Limited, 55/1, Deverabisanahalli, Bellandur Post, Sarjapur, Marathahalli ORR, Bengaluru, certain documents were impounded. A notice dated 7 November 2018 under section 143(2) was duly served on the Assessee, requiring it to produce documents, accounts, or evidence in support of its return of income. By letter dated 20 November 2018, the Assessee sought an extension of time. The Assessee had filed its original return for AY 2018–19 on 25 October 2018, vide acknowledgement No. 346494421251018, declaring a total income of Rs. 44,40,66,100/-.

4. During the survey under section 133A of the Income-tax Act, 1961, at the office premises of M/s Sobha Limited, a sheet containing the ledger account of Mr. D. K. Shivakumar was found and impounded. Analysis of the impounded material indicated that the Assessee-company had discharged VAT/GST liability of approximately Rs. 13 crores on his behalf. To verify this amount, the AO issued a notice under section 142(1) on 29 August

2019, requiring the Assessee to explain the payment and show cause why it should not be disallowed.

5. The Assessee explained that it had charged Service Tax/GST of Rs. 8,07,80,522/- to expenditure in FY 2017–18, with the balance in FY 2018–19. Under the applicable Service Tax/GST law, the developer was responsible for discharging the tax on the landowner' s share, while recovery from the landowner was a matter of commercial arrangement. Under the Joint Development Agreement executed in 2005, as subsequently amended, the Company became entitled to recover GST/Service Tax/VAT on the owners constructed area only upon its completion. Although the Company' s tax liability arose and was payable according to the level of construction activity in the respective years, completion of the mall had been substantially delayed and was expected only in FY 2019–20. Copies of the Joint Development Agreement and supplementary agreements were enclosed as Annexure 6. The 2005 agreement required the Company to pay delay compensation of Rs. 25 per square foot of super built- up area per month for delayed completion of the owners constructed area. During discussions, the landowners indicated that they would set off this compensation against the GST/Service Tax/VAT recoverable by the Company upon completion. As the anticipated delay compensation exceeded approximately Rs. 13 crores paid towards VAT and Service Tax, the Company considered recovery of that amount improbable and therefore charged it to expenditure rather than recognising it as a trade receivable, in accordance with recognised accounting principles. At the same time, because the Company intended to contest the delay- compensation claim on technical, commercial, and other grounds, it did not recognise a

corresponding liability. The parties would determine the recoverability of the taxes and the delay compensation upon completion of the building, after which the resulting revenue or expenditure would be recognised. Accordingly, the Assessee contended that it had acted bona fide and that no disallowance of the Service Tax/GST paid on the landowner's share was warranted.

6. The learned AO noted that the Assessee had claimed an expenditure of Rs. 80,783,033 towards Service Tax payable on the landowner's share in Sobha Global Mall and stated that it had discharged the landowners' Service Tax liability of Rs. 8,07,83,033. As the Company considered recovery from the landowners unlikely, it debited the amount to the profit and loss account. The AO rejected this explanation, holding that tax paid on behalf of a third party could not be deducted because it was neither the Assessee's own liability nor expenditure incurred wholly and exclusively for its business. Accordingly, the AO concluded that Service Tax/GST of Rs. 8,07,80,522/- paid on behalf of Mr. D. K. Shivakumar was not an allowable business expenditure, disallowed the amount, and added it to the Assessee's total income for AY 2018–19. The assessment order was passed on 31 December 2019.

7. Aggrieved by the assessment order, the Assessee preferred an appeal before CIT(A). Before the CIT(A), the Assessee contended that it had incurred Rs. 8,07,80,522/- in Service Tax/GST on the landowners' share of the built-up area pursuant to its statutory obligation. Under the Joint Development Agreement, these levies were recoverable from the landowners only upon completion and delivery of their constructed area. However, due to the

delay in construction, the landowners sought to adjust their substantially higher claim for delay compensation against the levies recoverable by the Assessee. As recovery of the amount was therefore improbable, the Assessee, in accordance with the principle of prudence and recognised accounting principles, charged the amount to expenditure rather than recognising it as receivable. Nevertheless, the AO disallowed the expenditure under section 37(1) of the Act on the ground that it represented payment of a third party's liability and was not incurred wholly and exclusively for the purposes of the Assessee's business. The Assessee submitted that the liability to pay Service Tax/GST was statutorily cast upon it and that, in view of the impossibility of recovery from the landowners, the expenditure was incurred wholly and exclusively for its business. Accordingly, the Assessee prayed that the disallowance be deleted.

8. The ld. CIT (A) held that the JDA is clear on who has to pay the GST/VAT/Service tax. As per Clause 12.4 of the JDA, the First Party, which is the landowner, has to pay the VAT/GST/Service tax in connection with the owner's constructed area. If the Second Party pays the aforesaid taxes for which the First Party is liable, the First Party has to pay the same to the Second Party on completion of the owner's constructed area in full, or proportionate to the area completed. The appellant chose to pay the GST/VAT liabilities and not recover them from the owners, contending that there was considerable delay in completing the construction, and in its absence it could have ended up paying much more in delay compensation. The appellant cited commercial expediency in not choosing to recover the statutory liabilities from the land owners. On perusal of the relevant clauses

of the JDA, it is observed that it is the land owner's liability to pay the GST/VAT on its share of the constructed area, and if paid by the Builder, it has to repay it in proportion to the area completed, to say the least. But in this case, the appellant chose not to recover the entire statutory liability, citing delay in completion of the project, for which it could have ended up paying compensation for the delay. These two clauses are totally unrelated. The clause on discharge of the statutory liabilities by the land owners is clear that it is the liability of the land owners. The delay clause, as mentioned in Clause 9.6, says that the builder is liable to pay Rs25/sq.foot of the Super BUA per month. The JDA was entered into in the year 2005, and the project was agreed to be completed within four years from the date of sanction of the licence and plan. The delay clause seems not to have been enforced, as it is clear that even in the year under consideration the project was not complete. The reason for commercial expediency is established in this case, as the appellant has not adequately demonstrated that the landowners have pressurized the appellant to pay the compensation for delay in completing the project even after 12 years of entering the JDA. The principle of commercial expediency cannot be applied blindly to every case. It depends on the facts of each case. In this case, payment of statutory liabilities in lieu of payment of delay compensation for completion of the project does not even border on commercial expediency, as both are on different footing. One is a statutory liability, and the other is a penalty or fine for delay in completion of the project, which cannot be equated at all. He did not find any merit in the submissions of the appellant on this issue. The addition made by the AO was confirmed.

9. Thus, the assessee is aggrieved and in appeal before us. And it authorised representatives Sri Srinivasan furnished paper book containing various details and also submitted a written submission which is under: -

1. The appellant has instituted the captioned appeal being aggrieved by the order passed u/s. 153C rws 143[3] rws 153D of the Act dated 31/12/2019, by the learned Deputy Commissioner of Income Tax, Central Circle – 1(4), Bangalore [herein referred to as the "AO"] for the above assessment year 2018-19 determining the total income of the appellant of Rs. 52,48,46,622/-. In the impugned order passed, the learned AO has made a solitary disallowance of Rs. 8,07,80,522/- in respect of the expenditure claimed on the VAT/GST paid by the appellant, which disallowance is the sole issue that arises for your Honour's consideration in this appeal.

2. Before coming to the grievances of the appellant as voiced in the grounds of appeal, it may be mentioned that the background facts relevant for appreciating the grievances of the appellant have been set-out in the Statement of Facts filed along with the appeal memo, which may kindly be averted to avoid the risk of repetition.

3. Briefly stated, the appellant company carries on the business of real estate development and execution of construction contracts.

   3.1 For the assessment year 2018-19, under appeal, the appellant company filed its return of income on 25/10/2018 reporting a total income of Rs. 44,40,66,100/-. The return of income filed by the appellant was accompanied by the audited financials and the tax audit report u/s. 44AB of the Act. A copy of the ITR-V, computation of income, financial statements and audit report is placed at **Pages 01 to 72 of the paper book.**

4. <u>SEARCH:</u>

   4.1 It is stated by the learned A.O. that pursuant to the warrant of authorization issued, a search action was conducted in the case of Sri D.K. Shivakumar and its concerns on 02/08/2017. As part of said search action, it is stated that the residence of Mr. D.V. Harish, #1072, Tower-C, Mantri Green Apartment, Malleswaram, Bangalore was covered u/s. 132 of the Act. It is stated that during the course of search documents belonging to and containing information relating to the appellant company was found and seized.

4.2 That apart, it is submitted that there was a Survey conducted u/s. 133A of the Act on 04/02/2019 in the premises of the appellant and certain documents were also impounded.

5. ASSESSMENT PROCEEDINGS:

5.1 After the search, the case of the appellant was centralized with the present A.O. vide order u/s. 127 of the Act of the Hon'ble Pr. CIT, Bengaluru – 2, Bangalore. Assessment proceedings u/s. 153C of the Act was commenced by the learned A.O. for the assessment year 2012-13 to 2017-18. As a part of the said proceedings, the case of the appellant was also taken up for scrutiny for the year under appeal as per the provisions of section 153B(1)(b) of the Act.

5.2 Statutory notice u/s. 143[2] of the Act dated 07/11/2018 was issued to the appellant to produce or cause to be produced any documents, accounts or evidence in support of the return of income filed by the appellant. Thereafter notices u/s. 142[1] of the Act was issued calling for various details and particulars from time to time. In response to the notices issued, the appellant has filed the requisite details, which has also been noted by the learned A.O. in the impugned order. The major issue examined in course of the assessment proceedings based on the impounded material in course of survey related to expenditure claimed by the appellant with regard to the payment of the landowner's share of Service Tax/GST discharged by the appellant.

5.3 In this regard, the learned A.O. issued a show-cause notice u/s. 142[1] of the Act, dated 29/08/2019 [placed **at pages 73 to 75 of the paper book]** proposing the disallowance of the Service Tax/GST. In response, the appellant made its submissions vide letter dated 09/09/2018 [placed **at pages 76 to 81 of the paper book]** objecting to the disallowance.

5.4 That apart, the appellant company had also filed the following documents before the learned A.O. with regard to the aforesaid issue:-

a. Rates and Taxes ledger [placed **at pages 82 to 87 of paper book**] along with 2 Journal Vouchers [placed **at pages 88 to 91 of paper book**] showing the payments made towards Service tax/GST relating to the landowner's share of built-up area that was liable to be discharged by the appellant;

b. Joint Development Agreement dated 12/10/2005 [placed **at pages 92 to 196 of paper book**] along with supplementary agreements in respect of which,

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the Service Tax/GST of land owners share of built-up area came to be discharged by the appellant company;

c. Service Tax Circular dated 10/02/2012 issued by the Ministry of Finance [placed **at pages 197 to 200 of paper book**]

6. IMPUGNED ORDER:

6.1 While concluding the assessment proceedings by passing the impugned order u/s. 143[3] of the Act, dated 31/12/2019, the learned A.O. has made a solitary disallowance of Rs. 8,07,80,522/- being the expenses claimed on the VAT/GST paid by the appellant as mentioned in para 1 above.

7. GROUND NO. 2 – DISALLOWANCE U/S. 37[1] OF THE ACT – RS. 8,07,80,522/-

7.1 It is submitted that the appellant had claimed expenditure of Rs. 8,07,80,522/- during the year under appeal relating to the Service Tax/GST paid on the landowners portion of the built-up area in accordance with the provisions of the respective statutes. It is relevant to point out here that there is no dispute on the fact that the said Service Tax/GST relates to the built-up area falling to the share of the landowner as is evident from the ledger account of Rates and Taxes [see **pages 82 to 87 of the paper book**] and copy of the journal voucher [see **pages 88 to 91 of the paper book**] filed.

7.2 It is relevant to mention here that the obligation to discharge these statutory levies is on the appellant under the respective Acts and hence, the same was discharged by the appellant. In fact as per circular no. 151/2/2012-ST [See **Pages 197 to 200 of the paper book**] dated 10/02/2012 issued by Ministry of Finance, it is clearly provided as under:

"Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument(eg: allotment letter)."

7.3 After discharge of the said liability, the appellant was entitled to recover these statutory levies from the landowners as per the Joint Development Agreement [JDA] entered into with the landowners. In this regard, the following relevant clause of the JDA is extracted hereunder:-

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"12.4 The First Party is liable to pay service and departmental charges, prorate charges and deposits payable to the Bangalore Electricity Supply Company Ltd., Bangalore, Water Supply & Sewerage Board and other Authorities and proportionate cost towards installation and creation of water, sanitary and electrical and other infrastructures like Transformers, ring main units, cable charges and work executed on D.C.W. basis along with supervision charges by the Electricity Board or concerned authorities, pile laying charges for water and sanitary connections from the main road in connection with the **OWNERS' CONSTRUCTED AREA**. The First Party shall pay their share for providing captive power in the Schedule Property. The First Party shall also be liable to pay Sales Tax on Works Contract, VAT or Service Tax or any other applicable taxes leviable on the **OWNERS' CONSTRUCTED AREA**. In case the Second Party pays the aforesaid deposits and service charges and taxes which the First Party is liable to pay, the First Party agrees to pay the same to the Second Party on completion of **OWNERS' CONSTRUCTED AREA** in full or in proportion to the area completed. The First Party agrees to pay to the Second Party the aforesaid sums at the time of completion of **OWNERS' CONSTRUCTED AREA** without fail. In the event of First Party beign unable to pay the same, the Second Party may adjust the dues by way of retaining for themselves such part of **OWNERS' CONSTRUCTED AREA** covering the dues and calculated at the mutually agreed rates or recover the same from First party. Similarly the Second Party shall pay all the amount stipulated above in respect of **"DEVELOPERS' CONSTRUCTED AREA".**

7.4 However, there was a delay in the completion of the construction in terms of the Joint Development Agreement entered into by the appellant. Even as per the JDA entered into, the appellant was entitled to receive the statutory levies paid only after the completion and delivery of the owner's share of constructed area. Thus, the landowners were also liable to make these payments to the appellant only upon delivery of possession and thus, these levies discharged by the appellant, had not accrued in terms of the JDA between the appellant and the landowners. However, liability to discharge the statutory levies were based on the activity level and hence, the appellant had made these payments to comply with the provisions of the law.

7.5 It is submitted that the statutory levies paid by the appellant in respect of the landowner's share of constructed area was not recoverable as at the end of the year. At this stage, it has to be mentioned that in terms of the JDA, the landowners were entitled to compensation for the delay in the completion of the

owner's constructed area. In this regard, the following relevant clause of the JDA is extracted hereunder:-

"9.6.1 In the event of any delay in completing the construction and development as stated above other than for the reason stated in above, the second Party shall be entitled to three months grace period to complete the development and construction of **OWNERS CONSTRUCTRED AREA** in the Schedule Property.

9.6.2 Should the second Party fail to complete development and construction and deliver **"OWNERS' CONSTRUCTED AREA"** as aforesaid even after the said Three months grace period, the Second Party will be given further time of three months thereafter after grace period mentioned in clause 9.6.1 above, subject to payment of Rs.25/- (Rupees Twenty Five only) per Sq.Ft. of super built-up area per month of delay of **"OWNERS' CONSTRUCTED AREA"** not completed by way of liquidated damages and the Second Party agrees to pay the same in the form of money or in the form of super built-up area calculated at the mutually agreed rates. Time is the essence of this contract. The sum of Rs.25/-(Rupees Twenty Five Only) per Sq. Feet super built up area per month is a reasonable compensation based on the rental value which would be available to the First Party if the **"OWNERS' CONSTRUCTED AREA"** is completed on time and if there is a delay the loss would be Rs.25/- (Rupees Twenty Five Only) per Sq. Feet of super bulit-up area per month. The Second Party in any case shall complete the entire construction within the stipulated period. If part of the **"OWNERS' CONSTRUCTED AREA"** is completed and delivered in any Tower/Building, the damages will accordingly stand reduced proportionately. The First Party shall also be entitled to in the alternative to deduct the liquidated damages from the interest free refundable deposit.

If the delay is more than six months from the date of expiry of the period stipulated, the First Party shall be entitled to deal with the Schedule Property and the Development and Construction thereon with third parties as they deem fit. The Second Party has no objection for the ...."

7.6 In light of the above, the landowners were also drawing the attention of the appellant to such compensation payable and it became apparent that they intended to adjust the statutory levies payable against the compensation for delay. The extent of compensation payable by the appellant would be far greater than the statutory levies discharged by the appellant in respect of the landowner's share of the constructed area.

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7.7 Having regard to these facts and circumstances, the appellant believed that recovery of the statutory levies from the landowners would not be possible and hence, no claim was made by the appellant on the landowners. Thus, the appellant followed the principle of prudence and had claimed the expenditure or loss that arises during the year and since, the amount receivable from the landowners did not accrue nor recovery of the said amount was foreseeable, the appellant did not recognize the same for purposes of accounting.

7.8 The learned A.O. while dealing with the aforesaid contentions of the appellant has invoked the provisions of section 37[1] of the Act. According to the learned A.O. the appellant has discharged the landowners' share of statutory dues and hence, it was the tax payable pertaining to a third party for which deduction was not permissible. According to the learned A.O. the aforesaid expenditure was not laid own wholly and exclusively for the purpose of the business and hence, the same has been disallowed.

7.9 It is submitted that the learned A.O. failed to appreciate that the obligation to discharge the statutory levies was on the appellant and hence, the same was paid and discharged by the appellant. Had the appellant recovered the amount from the landowner, the said recovery would off-set the expenditure incurred by the appellant and it would be revenue neutral. However, in the event the recovery is not possible, the expenditure borne by the appellant would undoubtedly be an expenditure laid out wholly and exclusively for the purposes of the business, as the obligation to discharge the statutory dues was on the appellant. in this regard, the appellant placed reliance upon **the decision of the Hon'ble Supreme Court in the case of SA Builders reported in 288 ITR 1** [copy placed at **Pages 201 to 207of the paper book**] wherein it has been held that the expenditure incurred for the purpose of business must be allowed.

7.10 In view of the above, the disallowance of Rs. 8,07,80,522/- made us unwarranted and the same is liable to be deleted. It is prayed accordingly.

8. **Ground No. 3** canvassed by the appellant is in relation to the levy of interest u/s 234B and 234C, which may kindly be disposed off in accordance with law.

In view of the above, it is respectfully prayed that the appeal of the appellant may be allowed for the advancement of substantial cause of Justice.

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10. The learned authorised representative further referred to the Joint Development Agreement between the Assessee and the landowners and submitted that the Assessee had written off the service tax liability relating to the landowners' share on grounds of commercial expediency. In support of this contention, he relied on the decision of the Hon'ble Supreme Court in S.A. Builders Ltd.

11. The learned Departmental Representative strongly supported the orders of the lower authorities. He submitted that the expenditure was not allowable under section 37(1) of the Income-tax Act because it was not incurred wholly and exclusively for the purposes of the Assessee's business. Referring extensively to the assessment order and the order of the CIT(A), he contended that the Assessee had failed to establish this requirement and that the disallowance was therefore rightly confirmed. He further submitted that the orders of the lower authorities disclosed no infirmity on this issue. According to him, the decision of the Hon'ble Supreme Court in S.A. Builders Ltd. was inapplicable to the facts of the case because the Assessee had not established any commercial expediency. He maintained that the expenditure represented a third party's liability and was therefore not deductible under section 37(1) of the Act.

12. We have considered the rival submissions and examined the orders of the lower authorities. The Assessee, a developer, entered into a Joint Development Agreement dated 12 October 2005 for the development of the property. Under the agreement, the landowners were allotted 45% of the constructed area, and the Assessee was allotted the remaining 55%. The landowners' share of the constructed property was also subject to service tax, which the Assessee discharged in accordance with the applicable service tax laws but did not recover from the landowners.

During the survey conducted at the Assessee's premises under section 133A of the Income-tax Act, a working sheet was found recording that the Assessee had deposited approximately Rs. 13 crores towards service tax on behalf of the landowners. Of this amount, the Assessee wrote off Rs. 8,07,80,522 in FY 2017–18 and claimed it as a deduction under section 37(1) of the Act; the balance was debited in the following financial year. The Assessing Officer questioned whether the deduction was allowable. The Assessee explained that, under the Joint Development Agreement, the

Assessee was liable to pay service tax on the landowners' share as the developer when the tax became due. As the project, which commenced under the agreement executed in 2005, was delayed, the Assessee became liable to pay delay compensation to the landowners. Since no such compensation had been paid, the Assessee considered it prudent to write off the service tax paid on their behalf and claim it as a deduction under section 37(1) of the Act. In support, the Assessee produced the rates and taxes ledger, journal vouchers, and the Joint Development Agreement. The Assessee discharged the service tax liability relating to the landowners' share; otherwise, it would have been liable to pay delay compensation. The JDA was executed on 12 October 2005, whereas the project was completed only in FY 2019–20. Although the Assessee could recover the service tax liability from the landowners, it did not. In view of the project delay and for commercial expediency, the Assessee bore the liability and wrote off the service tax amount. Accordingly, the expenditure is allowable under section 37(1) of the Act. The Assessing Officer rejected the Assessee's explanation and held that the expenditure was not allowable under section 37(1) of the Act.

13. Before the CIT(A), the Assessee reiterated that, had it sought to recover the service tax from the landowners, it would have been liable to pay delay compensation. It therefore submitted that, for commercial expediency, it did not recover the service tax and instead wrote off the amount. The CIT(A) held that the liability to reimburse service tax and the liability to pay delay compensation arose under distinct and unrelated clauses of the JDA and were not comparable. Accordingly, the CIT(A) rejected the Assessee's contention and confirmed the disallowance.

14. We find that the Assessee deposited service tax of approximately Rs. 13 crores on behalf of the landowners in accordance with the service tax law, and that the amount was recoverable from them. The Assessee contended that recovery would have exposed it to a claim for delay compensation. However, no evidence was produced before the lower authorities or before us to show that the landowners had made any such claim. Nor is there material to establish whether the delay was attributable to the Assessee or to the landowners. Without such evidence, no nexus is established between

the service tax recoverable from the landowners and any delay compensation allegedly payable to them. We therefore find no reason to interfere with the lower authorities' orders.

15. Section 37(1) permits deduction of expenditure, other than that covered by sections 30 to 36 and capital or personal expenditure, only where it is laid out wholly and exclusively for the purposes of the business or profession. In the present case, the Assessee did not incur any expenditure during the year; it merely wrote off service tax recoverable from the landowners. Of the approximately Rs. 13 crores paid on their behalf in earlier years and debited to their account, the Assessee claimed Rs. 8,07,80,522 as a deduction during this year and stated that the balance was claimed in the subsequent year. The Assessee provided no basis or justification for bifurcating the amount between the two years. Further, although the sum was debited to the rates and taxes account, the write-off itself did not constitute rates and taxes. As neither the expenditure nor the liability arose during the year, the claim fails to satisfy the conditions of section 37(1) of the Act.

16. In the absence of any claim by the landowners for delay compensation or supporting evidence, the alleged liability to pay such compensation and the service tax recoverable from the landowners are separate and unconnected matters. Accordingly, the Assessee has failed to establish any commercial expediency for writing off the service tax amount. The decision relied upon by the learned authorised representative does not assist the Assessee. In view of the foregoing, grounds Nos. 2 and 3 of the Assessee's appeal are dismissed.

17. Ground No. 4 is consequential in nature and is therefore dismissed.

18. In the result, the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 15th October, 2026.

Sd/-	**Sd/-**
SOUNDRARAJAN K.	**PRASHANT MAHARISHI**
JUDICIAL MEMBER	**VICE PRESIDENT**

Bangalore
Dated: 15.10.2026

TNTS

Copy to:

1	**SOBHA LIMITED** MARATHAHALLI, OUTER RING ROAD, BELLANDUR POST, BENGALURU-560103, KARNATAKA
2	**DEPUTY COMMISSIONER OF INCOME TAX,** CENTRAL CIRCLE-1(4), CENTRAL REVENUE BUILDING, QUEENS ROAD, BENGALURU-560001, KARNATAKA
3	THE PCIT / CIT,
4	THE CIT(APPEALS)
5	THE D.R., ITAT, BANGALORE BENCH

BY ORDER

ASSISTANT REGISTRAR
I.T.A.T., BANGALORE

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