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

\+ ITA 550/2016, C.M. APPL.27835/2016

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL-I) ..... Appellant

Through : Sh. Dileep Shivpuri, Sr. Standing Counsel with Sh. Sanjay Kumar, Jr. Standing Counsel with Sh. Vikrant. A. Maheshwari, Advocate.

versus

M/S EL EL HOTELS & INVESTMENT LTD. ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 13.02.2017

The Revenue contends in its appeal under Section 260A of the Income Tax Act, 1961, that the Income Tax Appellate Tribunal (ITAT) fell into error in upholding the CIT(A)'s order. The CIT(A) had deleted the penalty imposed by the Assessing Officer (AO), having regard to the circumstances of the case.

The assessee was subjected to search and seizure which resulted in assessment under Section 153A. In the returns filed upon notice under that provision, the assessee revised its depreciation claim – from the original 10% on the sum of ₹30.84 crores upwards to 25%. This claim was disallowed and the matter attained finality subsequently. The AO was of the opinion that this claim amounted to furnishing inaccurate particulars and the assessee was culpable under

Section 271(1)(c). The CIT(A) and the ITAT concurrently ruled that the claim in the circumstances did not attract the penalty provision under the Act.

Learned counsel for the Revenue urged that the Court should take note of the language of Section 271(1)(c) which clearly states that inaccurate particulars in a given case even in the form of a claim, can be subjected to penalty.

This Court notices that the ITAT took the overall circumstances of the case into account. That a depreciation claim was raised and an inadmissible claim of upward depreciation was made in these circumstances, was held *ipso facto* not to be actionable under Section 271(1)(c), as this is based upon factual appreciation and the result of a concurrent finding. The Court is of the opinion that no substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 13, 2017/ajk