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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ITA No. 736/2017

PRINCIPAL COMMISIONER OF INCOME TAX-9 .....Appellant
Through: Mr. Rahul Chaudhary, Senior standing counsel with Mr. Sanjay Kumar Mishra, Junior standing counsel.

versus

VATIKA HOSPITALITY PVT LTD .....Respondent
Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Advocate.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **18.09.2017**

1. There are two questions urged by the Revenue in this appeal against the impugned order dated 13th February 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2331/Del/2012 for the Assessment Year ('AY') 2008-09.

2. The first question concerns the addition of Rs. 3,35,33,933/- made by the Assessing Officer ('AO'), treating the expenses claimed on crockery, cutlery, utensils, etc. to be capital in nature on the premise that they were incurred in respect of a 'resort launched for the first time'.

3. In the appeal filed by the Assessee against the aforementioned order of the AO, the Commissioner of Income Tax (Appeals) ['CIT (A)'], by the

order dated 6th March 2012, sustained the disallowance only to the extent of Rs. 31,92,313/- and deleted the addition to the extent of Rs. 3,03,47,020/-. The CIT (A) found as a fact that the resort was restarted after repairs.

4. Appeals were filed both by the Revenue and the Assessee before the ITAT. By the impugned order of the ITAT, the Assessee's appeal was allowed and the Revenue's appeal was dismissed. The Revenue has filed the present appeal only against the order passed by the ITAT in its appeal, i.e. ITA No. 2331/Del/2012. The ITAT has by the impugned order concurred with the CIT (A) on facts and held that the entire expenditure incurred on crockery, cutlery, utensils, etc. should be treated as revenue expenditure.

5. The Court is not persuaded by the learned counsel for the Revenue that the above concurrent factual finding of the CIT (A) and the ITAT is perverse. No substantial question of law arises as regards the said issue.

6. The second question urged by the Revenue concerns the deletion of an addition of Rs. 10,00,51,049/- made by the AO on the basis of certain documents which were retrieved from the hard disc of the computer impounded during survey proceedings held on 4th February 2010.

7. On this issue, the CIT (A) has in the order dated 6th March 2012 discussed in detail the reconciliation statement, which was prepared twice – once during the proceedings before the CIT (A). No discrepancy was found in the balance sheet and profit and loss account. This finding again has been concurred with by the ITAT in the impugned order.

8. Here again, the learned counsel for the Revenue has been unable to persuade the Court that the concurrent factual finding is perverse. The Court, therefore, declines to frame a question on this issue as well.

9. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 18, 2017
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