

\$~2,3 & 6

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

+ **ITA 1184/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX-7..... Appellant

versus

RAMBAGH PALACE HOTELS PVT. LTD.,

..... Respondent

+ **ITA 1185/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX-7..... Appellant

versus

RAMBAGH PALACE HOTELS PVT. LTD.,

..... Respondent

+ **ITA 1188/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

RAMBAGH PALACE HOTELS PVT. LTD.,

..... Respondent

Through : Mr Sanjay Kumar and Mr Rahul Chaudhary,
Advocates for Appellant in item
Nos.2, 3 & 6.
Mr Aditya Vohra, Advocate for respondent
in item No.2, 3 & 6.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K.CHAWLA

ORDER
% 22.12.2017
CM Nos.47028/2017 & CM No.47031/2017 (exemption)

Allowed, subject to all just exceptions.

ITA 1184/2017 & CM No.47026/2017(condonation of delay)
ITA 1185/2017 & CM No.47027/2017(condonation of delay)
ITA 1188/2017 & CM No.47030/2017(condonation of delay)

1. The Revenue urges three questions of law in these appeals for Assessment Years 2006-2007 and 2009-2010. The first relates to the initial disallowance made in respect of expenses claimed towards repairs and maintenance. The Assessee manages a hotel in Jaipur. The Assessee's explanation was that this expenditure fell entirely in the Revenue stream and essentially for the purposes of its commercial activity, i.e. hospitality. The Assessee appealed that the maintenance of its rooms, in continuance are an intrinsic part of the expenditure incurred by it. The Assessing Officer (A.O.) felt that the expenses and repairs that they conferred in the Capital Addition are of an enduring nature and he sought to link the hotel Room Rate/rent claimed after repairs. The CIT(Appeals) set aside the additions holding that the expenditure fell entirely in the Revenue stream even by upholding part of the expenditure in respect of the Assessment Year 2006-2007. The Income Tax Appellate Tribunal (ITAT), however, set aside even the amounts that were brought to tax by the

CIT (Appeals).

2. The ITAT relied upon several judgments of various High Courts, especially, those judgments that dealt with repairs and maintenance in the case of Hotel Properties (*CIT versus Dasaprakash* : 114 ITR 210(MAD); *Asian Hotels Limited versus Deputy Commissioner of Income Tax* : (2006) 104 ITJ 921 etc.)

3. This Court is of the opinion that the ITAT's finding on this aspect cannot be faulted.

4. The Supreme Court in *Alembic Chemical Works Company Limited*, CIT 177 ITR377 enunciates the principles that having regard to the very similitude of the business and commercial activities, it is difficult to characterize a pigeon hole expenditure as either capital or Revenue merely on the basis of the broad description.

5. This Court is of the opinion that the ITAT conducted a proper analysis of the case law including the facts in the case and arrived at the correct conclusion that the expenditure is essentially within and not capital in nature.

6. As far as the question of law on the other two heads is sought, the Court noticed that it is entirely based on the factual analysis. The findings of the Lower Appellate Authorities are consistent and do not call for interference.

7. No question of law arises. These appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

DECEMBER 22, 2017/‘§n’

A.K.CHAWLA, J