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

\+ **ITA 395/2005**

ITA 1055/2005

ITA 666/2005

COMMISSIONER OF INCOME TAX DEL ..... Appellant

versus

M/S UNISONS HOTELS LTD. ..... Respondent

Present: Mr. Rahul Chaudhary and Ms. Vibhuti Malhotra, Advs. for the appellant in ITA 395/2005.
Mr. Puneet Rai, Standing Counsel for the appellant in ITA 1055/2005 & ITA 666/2005.

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

O R D E R

% **01.03.2018**

In all these appeals, a common question of law was framed on 18.1.2016, when these appeals were directed to be listed alongwith the other appeals (ITA 345/2005 and ITA 347/2005).

After quoting the question of law on 27.07.2017, the said two appeals (ITA 345/2005 and ITA 347/2005) and another appeal (ITA 358/2005) were disposed of in favour of the respondent. The question of law framed in those appeals was in identical terms, also by the same order of 18.01.2016. The Court in its order (of 27.07.2017), while disposing of the said three appeals) held *inter alia,* as follows :

> *"2. Learned counsel for the Appellant/Revenue has drawn the attention of this Court to the decision of the Supreme Court in Commissioner of Income Tax v. M/s Eli Lilly & Company (India) 312 ITR 225 (2009) (SC) in which it was held that interest under Section 201 (1A) of the Income Tax Act 1961 ('Act') is a compensatory measure for withholding the tax which ought to have gone to the exchequer. It has further been observed that the object underlying Section 201(1) of the Act is to recover the tax. In the case of short deduction, the object is to recover the shortfall.*
>
> *3. The impugned order of the ITAT which holds that Section 201 (1) and 201 (1A) of the Act are 'penal' in nature is plainly contrary to the above decision of the Supreme Court. Accordingly, Question (1) above is answered in negative i.e. in favour of Revenue and against the Assessee.*
>
> *4. Since the Question (1) is answered in the negative, Question (2) does not arise for consideration."*

For the above reasons, following the decision of the Supreme Court in *Commissioner of Income Tax vs. Eli Lilly & Company (India)*, 312 ITR 225 (2009) SC (quoted in the order in the other appeals),the question of law is answered in favour of the Revenue and against the assessee. The appeals are therefore, allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 01, 2018
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