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

+ **ITA 1014/2018**

Date of decision: 17th September, 2018

THE PR. COMMISSIONER OF INCOME TAX -7..... Appellant
Through Mr. Puneet Rai, Advocate.

versus

RAMBAGH PALACE HOTELS PVT. LTD. Respondent
Through Mr. Ajay Vohra, Sr. Advocate with
Mr. Aniket D. Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Revenue in this appeal under Section 260A of the Income Tax Act, 1961 (Act, for short) against the order dated 23rd March, 2018 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in the case of Rambagh Palace Hotels Pvt. Ltd. in ITA No.6025/Del/2014 and 6098/Del/2014, relating to Assessment Year 2005-06, has raised the following questions of law:-

“Whether Id. ITAT is legally justified in deleting disallowances of a part of repair and maintenances expenditure solely for the reasons that the assessee had furnished PAN of vendors by ignoring the finding of fact recorded by the AO that neither vendor nor

confirmation were produced during the course of assessment proceedings?

Whether Id. ITAT is legally justified in deleting disallowance of a part of repair and maintenances expenditure even when the assessee had fail to discharges its initial onus U/s 37(1) of the Act that expenditure was laid out wholly and exclusively for the purposes of the business of the assessee?"

2. The Assessing Officer vide assessment order dated 26th March, 2013 had allowed repair and maintenance expenditure of Rs.4,00,32,801/- paid to four different parties, who had appeared before him and whose statements were recorded on oath. However, the balance repair and maintenance expenditure of Rs.3,83,51,701/- was disallowed to the extent of 50%, on the ground of absence of supporting documents and in view of the complaint made by one Rajkumar Devraj. The findings recorded by the Assessing Officer are as under:

"The assessee has produced the vendors for verification/vendors documents, the expenditure on repairs and maintenance incurred by the said vendors amounts to Rs 4,00,32,801. However, the assessee was unable to produce the balance confirmation/balance vendors for verification, the expenditure pertaining to whom amounts to Rs 3,83,51,701. In the absence of any supporting documents and taking the complaint as the basis, for the balance expenditure of Rs 3,83,51,701, I deem it proper to treat 50% of Rs 3,83,51,701 i.e. Rs 1,91,75,850 as ingenuine and accordingly disallow the same.

I have also gone through the invoices pertaining to the vendors who were produced on oath. On careful examination of the invoices and other details for the vendors produced, I find that the expenditure pertaining to the vendors "Chandra Singh Contractor" of Rs 2,36,00,765 and "National Sanitation" of Rs 19,93,220 are capital in nature as the said expenditure gives enduring benefit to the assessee and hence disallowed. Depreciation @ 10% is allowed on the amount capitalized.

(Addition of Rs 1,91,75,850 + Rs 2,36,00,765 + Rs 19,93,220 =Rs 44769835)"

3. The Commissioner of Income Tax (Appeals) vide order dated 29th August, 2014 reduced the said disallowance from 50% to 5%, following the orders in earlier years. The first appellate authority had also referred to the written submissions of the respondent/assessee to justify and establish that this expenditure was genuine and was incurred wholly and exclusively for the purpose of business. Relevant portion written submissions of the respondent/assessee, as mentioned in the order of the Commissioner of Income Tax (Appeals) read as under:

“3.1 During the course of the assessment proceedings, the Appellant produced along with the copies of invoices of more than Rs. 1 lakh, also produced following vendors (along with copy of their Income-tax returns, copy of their bank accounts, copy of statement of, account of the Appellant in the book of contractors, etc) for physical verification to substantiate the genuineness of the expenditure (on March 4, 2013):

- Chandra Singh Contractor
- Rajputana electric Trading Co.
- National Sanitations

- Vijay Sanitary Works

3.2 Furthermore, the appellant also filed certain documents of following vendors for confirming the account balance of appellant in the books of vendors books vide submission dated March 22, 2013:

- Singh Construction Company
- Chetan Singh Ghelot
- Siddhi
- Rajpal Sharma
- Suman Chand

3.3 Out of the total expenditure incurred on Repair & maintenance account, the Ld AO held that since the Appellant was unable to produce the balance vendors (other than the vendors mentioned above) for verification of 50% of the expenditure amounting to Rs.3,83,51,70 i.e. Rs.1,91,75,850 is to be treated as ingenuine and accordingly disallowed the same.

3.4 During the course of the assessment proceeding, the Appellant has furnished all the details sought by Ld. AO and Appellant also produced the major vendors before the Ld. AO substantiate the expenditure incurred on repair and maintenance expenses. Furthermore, the Appellant also filed the complete list of vendors (app. 400 nos.) along with

their PAN (vide letter dated March 19, 2013) and also requested the Ld. AO that in case he so desires, he may issue notices to the vendors directly and ask their accounts confirmation with the Appellant's accounts. It is most respectfully submitted that, it is not required under any statute to produce the complete list of 400 parties for verification. However, the Ld. AO did not consider the submissions/details placed on record, vendors produced by the Appellant in short span of time and assumed the repair & maintenance expenses as non genuine without any basis or support. The Id. A. O. failed to appreciate the basis of expenditure incurred by the company even after verifying all bills/ supporting documents e.g. job order, receiving reports, transport co. evidence etc. for such expenses, withholding tax compliance for all the parties, payments through banking channels etc. Such compliance itself proves genuineness of parties/ expenses. The only basis of disallowance by A. O. is non production of vendors/ balance confirmations, in connection with the Appellant which the assessee company has produced all the details, PAN, addresses, copies of bills etc available with Appellant company and the A. O. have failed to verify them at his level.

3.5 Moreover, the Ld. AO has also failed to appreciate the CIT(A) order in the case of the Appellant in succeeding assessment years AY 2006-07, AY 2007-08 and AY 2009-10 wherein similar addition made by the Ld. AO was deleted by the CIT(A). It is pertinent to note that no appeal has been filed by the revenue before the ITAT against the

order of the CIT(A) for AY 2007-08 and thus the order of the Hon'ble CIT(A) became final.

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3.9 In the instant case, The Ld. AO had disallowed the 50% of the expenditure by saying that the Appellant was unable to produce the supporting documents (other than the vendors mentioned in point 2.5 and 2.6 above) and treated the expenditure as ingenuine in nature. The Ld. AO simply ignored and failed to appreciate the fact that the Appellant had duly submitted various details relating to the subject expenditure including bills of amount exceeding Rs.1 lakh.

3.10 Thus, the finding made by the Ld. AO that the repairs and maintenance expenditure are non-genuine is totally contrary to the facts involved in the instant case.”

4. The Commissioner of Income Tax (Appeals) had observed that the assessee had filed parawise details of the partly disallowed repair and maintenance expense with names, PAN number as well as the amount paid. The same parties had rendered and performed services in the subsequent years. The respondent-assessee had furnished details of the foreign suppliers/supplies, with copies of bills of lading etc. during the course of assessment proceedings. The Commissioner of Income Tax (Appeals) had observed that the respondent-assessee had produced all details and particulars during the course of hearing and, therefore, there was no justification not to make disallowance of 50%. However, the respondent-assessee had not been able to furnish confirmation from one M/s.

Govindram Contractor to whom payment of Rs.7,77,651/- was made. The assessee had stated that this person was unable to give confirmation due to his ill-health. For this account and reason, the Commissioner of Income Tax (Appeals) disallowed the expenditure to the extent of 5% amounting to Rs.19,17,585/-.

5. The Tribunal, in the impugned order, had recorded that the assessee had produced details of all vendors, including their PAN numbers, invoices raised by them, etc. Reference was also made to the orders passed by the Coordinate Bench of the Tribunal for assessment years 2006-07 and 2009-10, in which similar and *ad-hoc* the disallowance was deleted. It was observed that the Commissioner of Income Tax (Appeals) was not right in making disallowance of 5% on the ground of mere suspicion.

6. Learned counsel for the Revenue accepts that the Revenue had preferred ITA Nos.1184/2017, 1185/2017 and 1188/2017 against similar deletions made by the Tribunal for the earlier years, which have been dismissed, though these orders primarily deal with the question whether the expenditure incurred on repair and maintenance was revenue or capital expenditure.

7. The finding of the Tribunal deleting disallowance of 50% by the Assessing Officer is primarily factual. We have quoted the reply filed by the respondent/assessee before the first appellate authority. These documents and papers were relied upon by the Tribunal and the Commissioner of Income Tax (Appeals). However, copies of the said documents/papers have not been filed. There is nothing to show and establish that the findings of

the Commissioner of Income Tax (Appeals) and the Tribunal are perverse and factually incorrect.

8. Given the aforesaid facts, we do not think any substantial question of law arises for consideration. The appeal is accordingly dismissed, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 17, 2018

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