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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on: 09.10.2023

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ITA 1394/2006**M/S ASIAN HOTELS LTD**

..... Appellant

Through : Mr Tarun Gulati, Sr. Adv. with Ms
Aakanksha Kaul, Mr Aman Sahai, Mr
Kumar Sambhav and Mr Adit
Khorana, Advs.

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through : Mr Zoheb Hossain, Sr. Standing
Counsel with Mr Sanjeev Menon, Jr
Standing Counsel.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Court hearing/ Hybrid hearing (as per request)]****RAJIV SHAKDHER, J.:**

1. This appeal concerns Assessment Year (AY) 1991-92. Via the instant appeal, the appellant/assessee seeks to assail the order dated 28.04.2006 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] in ITA No.323/Del/95.

1.1 The impugned order has been passed in the appeals concerning AY 1991-92 to AY 1994-95.

2. Via order dated 18.09.2007, a coordinate bench of this court, insofar as this appeal is concerned, framed the following substantial questions of law:

“(1) Whether the finding of the Income Tax Appellate Tribunal that the “renovation and repair” expenses, partly capitalized in the books of account



of the Assessee is not the revenue expenditure admissible under Section 37 of the Income Tax Act, 1961 is correct?

(2) Whether the Income Tax Appellate Tribunal is correct in law in holding that payment made to Gherzi Eastern Ltd., an interior architect, Rs.11 lakhs for consultancy and supervision of interior décor of the existing hotel of the Assessee under “renovation and refurbishment” is capital expenditure?”

3. We have dealt with *pari materia* substantial questions of law while deciding ITA No.1398/2006, concerning AY 1992-93, which was treated as the lead matter with the consent of counsels for the parties.

4. We may note that the only difference that obtains in the questions of law framed in ITA No.1398/2006 concerns the quantum of fees paid to the consultant.

4.1. In the instant AY, i.e., AY 1991-92, the fees paid to GEL [hereafter referred to as “GEL”] was Rs.11,00,000/-, whereas, in AY 1992-93, GEL was paid fees amounting to Rs.23,18,695/-.

5. We may note that the Assessing Officer (AO) via the assessment order had inter alia, disallowed Rs.11,00,000/- paid by the appellant/assessee as a professional/technical fee to GEL.

5.1 In an appeal filed by the appellant/assessee, Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] via order dated 31.10.1994 upheld the AO’s order.

6. In an appeal filed by the appellant/assessee, the Tribunal sustained the order of the CIT(A) and dismissed the appellant/assessee’s appeal.

7. Having regard to the judgment rendered in ITA No.1398/2006, the instant appeal is disposed of with the following directions, as the view taken



in the said appeal will apply *mutatis mutandis* to the instant case as well:

8. The appellant/assessee will be entitled to claim the following deduction, as, in our opinion, it is in the nature of revenue expenditure:

(i) Rs.11,00,000/- incurred on payment of fees to GEL.

9. Thus, the substantial questions of law as framed are answered in favour of the appellant/assessee and against the revenue.

10. The appeal is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 9, 2023/aj