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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 1396/2006**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) 1994-95. 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.5489/Del/97.

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.44 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 1994-95, the fees paid to Gherzi Eastern Ltd [hereafter referred to as, “GEL”] was Rs.44,00,000/-, whereas, in AY 1992-93, GEL was paid fees amounting to Rs.23,18,695/-.

5. We may note that the AO via the assessment order dated 27.03.1997 had disallowed Rs.3,48,92,811/- incurred by the appellant/assessee on account of “renovation and refurbishment”. Likewise, Rs.44,00,000/- paid by the appellant/assessee as a professional fee to GEL was also disallowed.

5.1 The Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] via order dated 14.07.1997 deleted the disallowance concerning “renovation and refurbishment” and remanded the issue to the AO for fresh examination, except Rs. 3,94,113/- concerning construction of mock-up room and



provision of green marble in the lobby, which was disallowed, as capital expenditure.

6. Insofar as the payment of fees to GEL amounting to Rs.44,00,000/- was concerned, the CIT(A) sustained the disallowance made by the AO.

7. Upon the matter travelling to the Tribunal, it disallowed the entire expenditure on “repairs and renovation” amounting to Rs.13,30,93,811/- [Rs.3,48,92,811/- + Rs.982,01,000/-] (which included expenses that had been initially capitalized by the appellant/assessee and were claimed for the first time before the Tribunal as revenue expenditure).

7.1 Furthermore, the Tribunal in consonance with the view taken by the AO and CIT(A), disallowed the deduction claimed by the appellant/assessee concerning Rs.44,00,000/- paid as fees to GEL.

8. 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:

9. The appellant/assessee will be entitled to claim the following deductions, as, in our opinion, they are in the nature of revenue expenditure:

- (i) Rs.3,48,92,811/- incurred on renovation, refurbishment and repairs.
- (ii) Rs.44,00,000/- incurred on payment of fees to GEL.

9.1 Insofar as the amount of Rs. 982,01,000/- is concerned, which was initially capitalized and was claimed as revenue expenditure for the first time before the Tribunal and forms part of the additional grounds raised by the appellant/assessee in its appeal preferred before the Tribunal, it would stand remanded to the AO for examination of the character and nature of the expenses incurred, having regard to the principles adverted to in ITA 1398/2006.



10. Thus, the first question of law as framed is answered in favour of the appellant/assessee and against the revenue, with the caveat that insofar as the expenses that were the subject matter of the additional grounds taken before the Tribunal, the issue concerning the same shall stand remanded to the AO for further examination on merits.

11. The second question of law is answered in favour of the appellant/assessee and against the revenue.

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

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 9, 2023/aj