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**%18.08.2011**

Present: Mr Sanjeev Sabharwal, Adv. for appellant in ITAs No. 505/2010 & 562/2010 and for Ms Suruchi Aggarwal, Adv. in ITA No. 43/2009  
Mr O.S. Bajpai, Sr. Advocate with Mr V.N. Jha, Manswani Bajpai and Mr Sashwat Bajpai, Advocates for respondent.

**+ITAs 43/2009, 505/2010 & 562/2010**

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The respondent/assessee had borrowed certain funds which were utilized by the assessee to subscribe to the equity capital of the subsidiary company namely M/s Tulip Star Hospitality Services Ltd. This subsidiary company used the said funds for the purpose of acquiring the Centaur Hotel, Juhu Beach, Mumbai which is now functioning as 'The Tulip Star, Mumbai'. The assessee paid interest on the borrowed money. This interest liability incurred by the assessee was claimed by it as deduction on the ground that it was business expenditure. Assessing Officer (AO) refused to allow this expenditure. However, CIT(A) reversed the decision of the AO and the opinion of the CIT(A) has been confirmed by Income Tax Appellate Tribunal (ITAT) by impugned orders which relate to different assessment years. Challenging the said orders, these appeals are preferred.

A perusal of the orders passed by the Tribunal would reveal that it is noted by the ITAT that the assessee is in the business of owing, running and managing hotels. For the effective control of new hotels acquired by the assessee under its management it had invested in a



wholly owned subsidiary namely M/s Tulip Star Hospitality Services Ltd. On this ground, relying upon the judgment of the Supreme Court in the case of **S.A. Builders Vs. CIT**, 288 ITR 1 the Tribunal has held that the assessee was entitled to the deduction of interest on the borrowed funds. Observations made by the Supreme Court in S.A. Builders' case were quoted by the Tribunal as under:

*"where it is obvious that a holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans".*

In these circumstances holding it to be expenditure incurred for business same was allowed under Section 36(1) (iii) of the Income Tax Act by the Tribunal. The Tribunal has also held that this expenditure would be allowed even under Section 57(iii) of the Act. Though, there may be some controversy as to whether the aforesaid expenditure is allowable under Section 57(iii) of the Act or not, we have no doubt in our mind that the expenditure incurred under the aforesaid circumstances would be treated as expenditure incurred for business purposes and was thus allowable under Section 36 of the Act. Mr O.S. Bajpai, learned Sr. Advocate appearing for the assessee has produced a copy of the memorandum of association of the assessee which *inter-alia* speculates following objections:

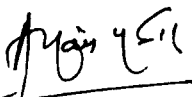
*"To own, purchase, construct, acquire, equip, operate, manage, conduct or in any other manner*



*and in all its aspects deal in hotels, motels, resorts, inns, guest houses, apartments, food courts, shopping plazas, commercial complexes, casinos, entertainment parks, water parks, amusement centers, gaming centers, howling alleys, wild life parks, restaurants, cafes, refreshment rooms, lodging houses of every kind and sort including all the conveniences, amenities and facilities adjunct thereto, in India or in any other part of the world and to act as consultants, advisors, experts, technical collaborators, valuers, surveyors, inventory analysts in all matters, pertaining to setting up of hotels, resorts, all form of lodging, touristic and leisure projects."*

We are, thus, of the opinion that no question of law arises.

These appeals are accordingly dismissed.

  
**A.K. SIKRI, J.**

  
**M.L. MEHTA, J.**

**AUGUST 18, 2011**

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