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% 14.07.2011

Present: Mr. Anupam Tripathi, Senior Standing counsel for Income Tax Deptt.
with Ms. Anusha Singh, , Advocates for Appellant.

+ ITA No.837/2011

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Two issues are raised in this appeal. The first issue pertains to the inclusion of a sum of Rs.66,73,323/- which was expended by the assessee in the form of payment in NDMC, in the costs of acquisition of Hotel Kanishka from ITDC under the disinvestment policy of Govt. of India during the year under consideration i.e. assessment year 2003-04. After purchasing the said property from ITDC, the Assessee was called upon to pay the aforesaid charges to NDMC by way of penalty/damages for certain unauthorized occupation/ construction. The Assessing Officer disallowed this on the ground that it could not be treated as costs to the "building" and, therefore, unauthorization construction thereupon was not allowed, as a result this amount could not be included for the purpose of depreciation as claimed by the Assessee.

In appeal, CIT(A) allowed the Assessee to include the aforesaid amount in the cost of building and depreciation thereupon. It was held that since the aforesaid amount had to be paid after acquisition of the property in occupation from ITDC, it would form part of the acquisition costs and would be treated as costs on acquiring the "building". The order of CIT(A) has been dealt with by the Income Tax Tribunal resulting into dismissal of the appeal of the Revenue.



In this appeal preferred against the order of the Tribunal, it is not disputed that such an amount can be treated as part of consideration for acquisition of property/ building and, therefore, can be included in the said costs for the purpose of depreciation. However, the submission of learned counsel for the appellant is that since the amount was paid by way of penalty/ damages for unauthorized occupation/ construction, such an amount had to be disallowed as the payment was made for some purported offence committed and/or for violating the provision of law, namely NDMC Act and Building Byelaws in the instant case.

The fact remains that it is not the assessee who had committed any such violation. After the property was purchased from the ITDC in auction and when the assessee approached the NDMC for mutation of the said property in its name, at that stage NDMC raised the aforesaid demand which pertains to the alleged violation for the period when the aforesaid hotel property was with ITDC. In these circumstances, we are of the view that the aforesaid contention of the Revenue is totally misconceived and provisions Explanation to Section 37 of the Act would not be applicable in these circumstances.

Since the issue pertains to depreciation which has been allowed by CIT(A) as well as ITA at 60% on computers and UPSs holding that the same is an integral part of computers and, therefore, higher depreciation is allowed.

This issue has been set at rest by this Court in ***CIT vs. BSES Yamuna Powers Limited*** (ITA No.1267 of 2010 dated 31st August, 2010).



We, thus, are of the opinion that no question of law much less substantial question of law arises in this appeal. The appeal is hereby dismissed.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'M.L. Mehta'.

M.L. MEHTA, J.

JULY 14, 2011

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