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

\+ ITA 348/2012

MIRA KULKARNI ..... App

Through Dr. Rakesh Gupta, Mr. Beriwal, Ms. Rani Kiyala, Mr. R Kapoor and Ms. Kanika Gupta, Advoca

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respo

Through Mr. Sanjeev Sabharwa Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 19.08.2013

C.M.No.9172/2012

Delay of 21 days in re-filing of the appeal is condoned.

The application is disposed of.

ITA 348/2012

In this appeal by Revenue, which relates to the assessmer 2002-03, the question raised relates to disallowance of the foll amounts:-

i. Repair & Maintenance Rs. 3,91,611/-
ii. Travelling and Halting Rs. 93,892/-
iii. Salary and Local Conveyance Rs. 1,15,536.5/-
iv. Vehicle Maintenance and Telephone Rs.58,913.2/-

2. The issues raised are primarily factual. The appellant he an individual and part owner of the property situated at Rish

Uttrakhand. A portion of the said property, pur agr
dated 1st April, 1999 with Neemrana Hotels Private Limited, wa
used as a hotel. The appellant-assessee was entitled to mi
guarantee amount of Rs.90, 000/- per quarter or 30% of the
operating profits whichever was higher. The gross operating profi
calculated for every quarter in terms of the said agreement.

3. A similar question had been raised in ITA 199/2010 filed
appellant in respect of assessment year 2003-04. The said IT
dismissed vide order dated 16th December, 2011. In the said
reference to Section 37 (1) of the Income Tax Act, 1961 was ma
its contours were explained. Different clauses of the agreement d
April, 1999 were referred to and thereafter it was concluded tha
was no justification or reason to interfere with the order of the tribu

4. Learned counsel for the appellant has drawn our attention
observations made by us in paragraph 15 of the order date
December, 2011 and it is submitted that in the said year the asses
failed to furnish requisite documents and, therefore, adverse
finding has been recorded. He has also drawn our attention to th
dated 25th May, 2010 written by Neemrana Hotels Private Limited.

5. We have considered the said letter and examined whet
contents of the said letter justify a different view from the one ta
the order dated 16th December, 2011 and whether the order of the t

can be factually categorized as perverse. It has been the

dated 16th December, 2011 that in their letter/reply Neemrana I

Private Limited had submitted that according to the agreement, they

liable to carry out repair and maintenance only for the property us

the hotel. They had further stated that the property was jointly us

both parties as per the enclosed map and open spaces were used b

appellant to grow agricultural produce. A double storeyed structur

under the appellant's occupation for her residence and office. Insp

the contents of the letter, the contention of the appellant was rejected

quoting covenants of the agreement between the parties under wh

was the obligation of Neemrana Hotels Private Limited to mainta

hotel and their liability to pay all regular maintenance charges, incl

but not limited to general up keep, such as waterproofing, paintin

These expenses were to be borne by Neemrana Hotels Private Li

Thus, personal expenses/charges had been claimed and treated b

appellant as expenses under Section 37(1) and this should n

permitted.

6. In the letter dated 25th May, 2010, Neemrana Hotels P

Ltd. has accepted that they run day-to-day operations of the

and manage boarding and lodging of the guests. The hotel it is

forms a very small part of the property and the major part consis

garden or orchids in addition to the area of cultiv ipp
maintained a temple and cow shed and supplied water from a s
The appellant had a guest house in the property where she used t
and conduct other activities. Major repairs to the hotel rooms w
the cost of the appellant and they had debited the amount spe
repair and maintenance on appellant's behalf for which she was
under the agreement. They i.e. Neemrana hotels Pvt. Ltd.
responsible for maintaining of internal rooms and premises
externals were looked after by the appellant and her employees.

7. Notwithstanding this letter, tribunal in the impugned ord
not find any ground or reason to take a different view. The letter,
been observed, was a self serving statement, given by an associ
benefit the appellant. The clauses of the written contractual agre
were lucid and as per clause 5.2, all regular maintenance charge
water proofing, painting and other repairs have to be paid by Nee
Hotels Private Limited.

8. There is some difference in the letter written by Nee
Hotels Private Limited quoted in the order dated 16th December,
and the letter dated 25th May, 2010. However, as noted abov
tribunal has observed that this letter is a self serving statement,
by an associate to benefit the appellant. The fact of the matter i
the written contractual agreement between the parties remains the

and was not modified or amended. It is notice e proceedings that the appellant has been setting off and cla personal expenses as business expenditure. The written agre does not postulate and require the appellant to undertake any sp work relating to ambiance or outside area. Letter dated 25th May also does not talk or speak of any specific work or repair undertak the appellant. The tribunal while examining the factual positio noticed the appellant carried on agricultural operations on the lan her involvement in the hotel was not direct and her explanation c change the clauses of the agreement. The said findings are findi fact and no substantial question of law arises. We do not think th said findings can be categorized and treated as perverse or illogi one which could not be entertained. It will be misconception that the facts found by the tribunal are such that no person judiciously or properly instructed as to law would have opined similar manner.

9. At this stage, learned counsel for the appellant has draw attention to the remand report dated 23rd June, 2010, where Assessing Officer has recorded as under:-

> ".....As per the Income and expenditure A/c provided b M/s Neemrana Hotel Pvt. Ltd. Shows that only a sum Rs.91,611/- was deducted by them against maintenance an cost of material incurred by them in the hotel property. At th most, the total allowance U/s 37(1) of the Income-tax Ac

1961 should be restricted to this amount ire
attributable to earning of income from the hotel called Gla
House on Ganges. It may not be out of place to mention th
the assessee has debited all type of expenses against recei
from the hotel."

10. Having heard counsel for the parties and in view of the re
report, we frame the following substantial question of law:-

> "Whether the Income Tax Appellate Tribunal was not justified in allowing the expenditure of Rs.91,616/- as business expenses in view of the remand report?"

11. Having considered the remand report and in view of the fac
Rs.91,611/- was accepted and admitted in the remand repo
expenditure which had been deducted from the amount payable
appellant, we remit the matter to the tribunal to examine the
account and decide. It will be examined whether the total re
declared by the appellant were inclusive of this amount or minu
amount and thereafter on the basis of the remand report and conte
of the Revenue and the appellant, the issue of deduction of the
amount will be considered and decided. This aspect/account ha
been specifically dealt with or considered by the tribunal. To
limited extent, the appeal stands allowed with an order of remand.

SANJIV KHANNA

SANJEEV SACHDEVA,

AUGUST 19, 2013/NA