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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL NO. 89/2013**

Date of decision: 10th October, 2013

UNISON HOTELS LTD.

..... Appellant

Through Mr. Siddharth Shankar Dev,
Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (Act, for short), relates to Assessment Year 2005-06 and arises out of order of the tribunal dated 23rd March, 2012.

2. By order dated 10th July, 2013, the following substantial question of law was framed:-

“Whether the order of the Income Tax Appellate Tribunal confirming penalty under Section 271(1)(c) of the Income Tax Act, 1961 is justified as the appellant-assessee was assessed and had paid tax under MAT



provisions?”

3. As is apparent from the question itself, income of the appellant-assessee has been assessed under Section 115JB of the Act. As per the income tax return filed on 31st October, 2005, the appellant-assessee had suffered loss of Rs.12.28 crores under the normal provisions. The Assessing Officer while examining the profit and loss account and statement of income prepared under the normal provisions, disallowed donation of Rs.50,98,500/-, which had been claimed as expenditure in the profit and loss account. Under the heading “operating and general expenses” schedule (xviii) the appellant-assessee had specifically under “donation” mentioned this amount. However, the Assessing Officer computed the income on book profits under Section 115JB after noticing that the assessee had earned profit of Rs.14,47,91,067/- in the said assessment year. No adjustment towards book profits was made, except on account of provision for wealth tax and excess depreciation charged on electrical fittings. Accordingly, minimum alternative tax was computed.

4. The Assessing Officer thereafter initiated penalty proceedings under Section 271(1)(c) of the Act and imposed penalty of Rs.24,94,596/-. While calculating the penalty, the Assessing Officer records that the returned income was at loss of Rs.12,27,93,403/- and the assessed income was at the positive figure of Rs.14,47,91,067/-.



The amount in respect of which inaccurate particulars were furnish was taken at Rs.50,98,500/- plus foreign commission of Rs.18,89,158/- (addition towards foreign commission was deleted by the tribunal and, therefore, is not subject matter of the present appeal and penalty has not been sustained by the tribunal on the said amount).

5. In the first appeal filed before the Commissioner (Appeals), it was stated that donation of Rs.50,98,500/- was given to charitable organisations and deduction under Section 80G of the Act was assessable. This amount was shown as an expense under the head “administrative expenses” in the profit and loss account and the relevant schedule of the balance sheet. It was stated that by mistake, the appellants-inventor inadvertently had failed to add back or disallow Rs.50,98,500/- while computing the taxable income in the statement of accounts. This was an inadvertent error as the amount paid was clearly disclosed under the entry “donation” in the heading “administrative expenses”. There was no concealment.

6. The Commissioner (Appeals) confirmed the said penalty and by the impugned order penalty imposed has been sustained by the tribunal.

7. Learned counsel for the appellant has relied upon decision of the Supreme Court in *Price Water House Coopers Private Limited versus Commissioner of Income Tax*, (2012) 348 ITR 306(SC), but we need



not examine the said aspect as the appellant is entitled to succeed
view of the decision of the Delhi High Court in *Commissioner of
Income Tax versus Nalwa Sons Investments Limited*, (2010) 327 ITR
543 (Delhi) wherein it has been held that when taxable income is
computed on book profits under Section 115JB and not under the
normal provisions, Explanation (4) has to be accordingly applied. In
view of the said Explanation, the additions made by the Assessing
Officer under the normal provisions are totally irrelevant. Thus, there
cannot be imposition of penalty under Section 271(1)(c) of the Act for
addition made under the normal provisions.

8. Question of law is accordingly answered in favour of the
appellant-assessee and against the respondent-Revenue. The appeal is
disposed of. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

**OCTOBER 10, 2013
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