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

% Order reserved on : 27th November, 2013
Order pronounced on: 21st February, 2014

\+ **WP(C) No. 3094 of 2013**

M/s HOTEL SHIV .... Petitioner

Through Mr.Kedar Nath Tritpathy with Mr. H.P. Sahu, Advocates.

Versus

COMMISSIONER OF INCOME TAX-VIII, NEW DELHI.

.....Respondent

Through: Mr. Balbir Singh with Mr. Rupender Sinhmar and Mr. Abhishek Singh Baghel, Advocates.

CORAM:

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

SANJEEV SACHDEVA, J.

1. The petitioner has filed the present petition impugning the order dated 25.03.2013, whereby the revision petition of the petitioner under Section 264 of the

Income Tax Act, 1961 (hereinafter called 'the Act') has been partly rejected.

2. The petitioner-assessee is a partnership firm engaged in the business of running a guest house. The assessment year in issue is 2008-09. The petitioner-assessee filed its return of income tax on 25.09.2008, which was processed under Section 143(1) of the Act. Subsequently assessment was framed under Section 143(3) on 29.10.2010 on taxable income of Rs.18,75,616/-.

3. By the assessment order expenses of Rs.12,26,508/- were disallowed. The said expenses comprised of Rs.11,63,391/- paid as conversion charges and Rs.63,117/- as annual property tax with respect to the portion of the building used as guest house.

4. The petitioner-assessee filed an application under Section 264 of the Act, seeking revision of the

assessment order and claimed allowance of the expenditure of Rs.12,26,508/-, that had been disallowed by the Assessing Officer.

5. To understand the controversy, it would be necessary to refer to the facts briefly.

6. The petitioner is a partnership firm of two partners namely Smt. Krishna Leekha and her son Shri. Anuj Leekha. The partnership firm was set up with the objective of running and operative guest house services from the first and second floor of the building situated at H-2, Green Park Ext., New Delhi.

7. The building, from where the said guest house operates, was owned by the two partners in their individual names. Smt. Krishna Leekha is the owner of the first floor and Shri. Anuj Leekha is the owner of the second floor.

8. Since the partnership firm was using the portion of the building for the purposes of running the guest house, the expenditure relating to the maintenance of the building was being booked by the said firm in its accounts as revenue expenditure. The house tax being paid on commercial rates was also being claimed as revenue expenditure by the assessee firm.

9. Pursuant to the judgment of the Supreme Court in the case of *M.C. Mehta & Ors. Vs. U.O.I. & Ors. (WP (C) 4677 of 1985),* the Ministry of Urban Development notified that commercial establishments on notified roads would be allowed to continue/operate, subject to payment of conversion charges fixed by the Government under the mixed land use policy.

10. The building, from which the petitioner-assessee was operating, fell on one such notified road and the owners became entitled to the conversion of the land use. The petitioner firm, paid a sum of Rs.11,63,391/-

towards conversion charges and Rs.63,117/- as property tax in the year 2007-08. The petitioner claimed this sum of Rs.12,26,508/- (Rs.11,63,391/- + Rs.63,117/-) as revenue expenditure and debited the same in the profit and loss account.

11. This claim of the petitioner was rejected by the Assessing Officer, while framing the assessment for the year 2008-09.

12. Aggrieved by the disallowance of the said expenditure, the petitioner filed the application under section 264 of the Act, seeking revision of the assessment order and setting aside of the disallowance of the said sum of Rs.12,26,508/-.

13. The Commissioner of Income Tax partly allowed the revision petition. The annual property tax paid by the petitioner of Rs.63,117/- was allowed as an expenditure, however, Rs.11,63,391/- paid towards

conversion charges was disallowed. It is this part of the order that the petitioner impugns in the present petition.

14. The property, from where the petitioner was operating, was a residential property. It is the admitted case of the petitioner that the property owned by the partners of the petitioner, was not contributed by the partners as capital in the firm and the building is also not shown in the books of accounts as an asset owned by the firm. The property continues to be owned by the partners in their individual capacity.

15. In *M.C. Mehta's* case (supra), Ministry of Urban Development framed the policy for conversion of the property to mixed land use and further notified the roads, on which the property situated could be converted to mixed land use. Pursuant to the policy framed by the Ministry of Urban Development, the properties situated on the said notified road could be

converted and put to commercial use, subject to payment of conversion charges. This resulted and permitted change of land use for future.

16. As per the policy only those owners, who apply and pay the conversion charges, were permitted to put their residential properties to commercial or mixed use. Once a property stands converted to commercial/mixed land use, there was substantial enhancement and increase in value of the said property. There being an enduring benefit from the said conversion.

17. The conversion charge paid for conversion of the property from residential to commercial was a one time charge and not a recurring expenditure incurred from year to year. The one time conversion charge for conversion of the property from residential to commercial use is distinct and different from annual house tax paid at commercial rates. Annual house tax

paid on commercial rate is paid for the use during the financial year. It is an annual and reoccurring payment which the land lord, tenant or the occupant must make under the applicable statute. The one time conversion charge permanently converts the use of the property from residential to commercial/mixed land use. Once the property is converted, the benefit of the same will enure to the owners of the property. It enhances and adds to the value of the capital asset i.e. the property

18. In the present case, the owners of the property are the partners in their individual capacity and as such the enduring benefit of conversion from residential to commercial enures to the owners. In case the petitioner assessee were to discontinue its business, even then the partners i.e. the owners of the property in their individual capacity would still have the right to put the property to commercial/mixed land use. This advantage and benefit that the property has acquired

by payment of conversion charges will continue to enure to the individual partners irrespective of the assessee discontinuing to do the business of guest house from the said property. Thus, this expenditure is a capital expenditure and has brought about an advantage of an enduring nature, and this advantage is attached to the property. Since the advantage of enduring nature is attached to the property, the benefit of the same will enure to the owners of the said property. The expenditure for acquiring the said advantage is an expenditure incurred purely for the individual partners. Had this expenditure been incurred by the individual owner, it would have been a capital and not a revenue expense. There is no justification and reason, why the petitioner firm made the said payment and on what terms/ basis payment was made. The said expenditure cannot be treated as running business expenditure and cannot be claimed as a deduction under Section 37 of the Act by the

petitioner/assessee. At best it would be payment on behalf of and at the behest of the owners, who were also partners of the petitioner.

19. Individual owners and the partnership firm are two distinct tax entities for the purpose of the Act and are liable to pay income tax on their income after reducing revenue expenditure. But in the facts of the present case while deciding the question of enduring benefit, we cannot be oblivious and ignore the practical reality that unless the partners of the petitioner want the partnership firm i.e. the petitioner cannot continue to operate and run the guest house. Therefore, while determining and deciding the question whether the expenditure was capital or revenue in nature, the fact and also the position that the expenditure should have been incurred by the owners cannot be ignored.

20. We are of the considered view that the nature of expenditure is clearly capital and incurred on account

of the individual partners and is neither a capital nor revenue expenditure of the partnership firm respondent assessee. We find no infirmity in the order rejecting the application of the petitioner under Section 264 of the Act, refusing to interfere in the assessment order, whereby the said expenditure has been disallowed.

21. The present petition is accordingly dismissed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

February 21, 2014 **SANJIV KHANNA, J.**
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