



\$~

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

+ ITA 1398/2010

THE COMMISSIONER OF
INCOME TAX

Through

..... Appellant

Mr. Sanjeev Sabharwal, Senior
Standing Counsel.

versus

M/S. EPICUREAN HOSPITALITY
SERVICES PVT. LTD.

Through

..... Respondent

Mr. S. Krishnan, Advocate

%

Date of Decision: 17th September, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

CM No. 16447/2010

Allowed, subject to all just exceptions.

ITA 1398/2010

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 9th October, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 01/Del/2009 for the Assessment Year 2005-06.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition of ₹ 5,67,957/- on account of capital expenditure on the construction of kitchen in the rented premises.



3. However, upon a perusal of the file we find that the final fact finding authority, namely, Tribunal has concluded that the aforesaid expenditure had been incurred on repair and renovation of a kitchen which was not owned by the respondent-assessee and consequently, the test of enduring benefit was not satisfied. In fact, the Tribunal in its impugned order has observed as under :-

“7. We have considered the rival submissions. Considering the nature of business and considering the fact that the premises for kitchen were in rented premises and to make the premises fit for use it as kitchen, the assessee was required to incur certain expenses on roofing, ducting, tiles and flooring etc. By incurring such expenses, no new area is added in the existing building. Flooring or tiles by itself is not a capital asset. The same are attached to the premise which is not in the ownership of the assessee. Therefore, even if it may be held that the benefit being enduring over the lease period, the same will not be conclusive to hold the expenses as capital in nature. As held by Hon’ble Supreme Court in the case of Alembric Chemical Works Co. Ltd. Vs. CIT 177 ITR 377, the test of enduring benefit will fail so as to treat the expenditure as capital expenditure. We, therefore, hold that the expenditure on account of renovation of kitchen by replacing roof, ducting, tiles and flooring etc. will not result into capital expenditure but is revenue expenditure and hence allowable as such.”

4. Since the Tribunal has applied the true legal test for determination of revenue expenditure, we are of the view that the impugned judgment does not call for any interference. Accordingly, the present appeal is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 17, 2010/rn