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

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Judgment Pronounced on: 09.10.2023+ **ITA 1342/2007**

ASIAN HOTELS LTD. Appellant

Through : Mr Tarun Gulati, Sr. Adv. with Ms
Aakanksha Kaul, Mr Aman Sahai, Mr
Kumar Sambhav and Mr Adit Khorana,
Advs.

versus

COMMISSIONER OF INCOME TAX I NEW DELHI... Respondent

Through : Mr Zoheb Hossain, Sr. Standing Counsel
with Mr Sanjeev Menon, Jr Standing
Counsel.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU**

[Physical Court hearing/ Hybrid hearing (as per request)]

RAJIV SHAKDHER, J.:

1. This appeal concerns Assessment Year (AY) 1996-97. *Via* the instant appeal, the appellant/assessee seeks to assail the order dated 31.05.2007 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] in ITA No.2771/Del/2002.

1.1 In disposing of the appeal, the Tribunal followed the order dated 28.04.2006 passed in the appeals concerning AY 1991-92 to AY 1994-95.

2. *Via* order dated 01.05.2008, a coordinate bench of this court, insofar as this appeal is concerned, framed the following substantial question of law:

“(1) Whether the Income Tax Appellate Tribunal was correct in law in



holding that the renovation and repair expenses incurred on account of improvisation and better conduct of the existing business is a capital expenditure?”

3. We have dealt with a substantial question of law concerning the same issue while deciding ITA No.1398/2006, pertaining to AY 1992-93, which was treated as the lead matter with the consent of counsels for the parties.

4. We may note that the only difference that obtains in the substantial questions of law framed in ITA No.1398/2006 and the instant appeal is that a second question of law concerning fees paid to the consultant i.e., Gherzi Eastern Ltd., does not arise in the instant appeal.

4.1. In the instant AY, i.e., AY 1996-97, the Assessing Officer (AO) via the assessment order dated 19.03.1999 had disallowed Rs.67,44,331/- incurred by the appellant/assessee on account of “renovation and refurbishment”.

5. The Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] via order dated 14.03.2002 granted partial relief to the assessee by directing that Rs. 89,391/-, which had been incurred on replacement of wall papers, painting and railing panel lights, be treated as revenue expenditure, while sustaining the disallowance of the remaining amount i.e., Rs. 66,54,940/-.

6. The appellant/assessee carried the matter in appeal to the Tribunal, which sustained the order of the CIT(A).

7. Having regard to the judgment rendered in ITA No.1398/2006, the instant appeal is disposed of with the following directions, as the view taken in the said appeal will apply *mutatis mutandis* to the instant case as well:

8. The appellant/assessee will be entitled to claim the following deduction, as, in our opinion, it is in the nature of revenue expenditure:



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- (i) Rs. 66,54,940/- incurred on renovation, refurbishment and repairs.
9. Thus, the substantial question of law as framed is answered in favour of the appellant/assessee and against the revenue.
10. The appeal is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 9, 2023/aj