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

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Judgment Pronounced on: 09.10.2023+ **ITA 486/2007**

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 IN

..... 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) 1995-96. Via the instant appeal, the appellant/assessee seeks to assail the order dated 15.09.2006 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] in ITA No.3372/Del/2002.

2. Insofar as the above-captioned appeal is concerned, the following questions of law were framed by the court *via* order dated 18.09.2007:

“(i) Whether the finding of the Income Tax Appellate Tribunal that the “renovation and repair” expenses, partly capitalized in the books of account of the Assessee is not the revenue expenditure admissible under Section 37 of the Income Tax Act, 1961 is correct?”



(ii) Whether the Income Tax Appellate Tribunal is correct in law in holding that the expenses incurred on replacement of door shutters, bus bar and MS frames for fixing false ceiling forming part of the existing hotel of the Assessee is capital expenditure?”

3. Insofar as the first question is concerned, we have dealt with a *pari materia* substantial question of law while deciding ITA No.1398/2006, concerning AY 1992-93, which was treated as the lead matter with the consent of the counsels for the parties.

4. The second question of law concerns the allowability of the following items of expenditure:

<i>Replacement of Door shutters</i>	<i>Rs.71,45,416/-</i>
<i>Fixing of Bus Bars</i>	<i>Rs. 32,000/-</i>
<i>Fabrication of frame for fixing the false ceiling</i>	<i>Rs. 36,283/-</i>

4.1. The Commissioner of Income Tax(Appeals) [hereafter referred to as “CIT(A)”] held the aforesaid items of expenditure as being in the nature of revenue expenditure. [See para 4 above]. The findings of fact returned by the CIT(A) in this behalf are set out hereafter:

“5 The AO held that these expenses were capital expenses and are not covered under the scope of current repairs. He disallowed the same and allowed depreciation at 25% as per Rules. The appellant’s case that the expenses are revenue expenses and represent the normal wear and tear in the running of the hotel , hence are allowable.

*6 The issue as to whether the expenses of the nature discussed above are revenue or capital has been discussed by me in the appellant’s own case for A.Y. 94-95 , 95-96 & 96-97. **In so far as the redoing of the Air-conditioning system is concerned , had held in the preceding year that the same is in accordance with well a planned scheme of renovation and improvement of the hotel premises and f or installation of a completely new air-conditioning system. The expenses of Rs.60098/- are accordingly to be capital expenses and***



the AO's order on this respect is upheld. In the case of replacement of door shutters, fixing of Bus Bars, replacement of basin of the cooling tower and fabrication of frame for fixing the false ceiling, the AO has not disputed the claim of the appellant that the expenses were entirely on account of replacement of fixture and fittings and no new assets was brought into existence. The AO is accordingly directed to allow the following expenses as revenue expenses.

Replacement of Door shutters	Rs.71,45,416/-
Fixing of Bus Bars	Rs. 32,000/-
Replacement of basin of the cooling tower	Rs. 35,784/-
Fabrication of frame false ceiling.	<u>Rs 36,283/-</u>
	Rs. 72,49,483/-

Thus an addition of Rs.72,49,483/- is deleted. The AO will withdraw the depreciation allowed on this amount. The addition of Rs. 60,098/- on redoing the air conditioning system is upheld.”

4.2. Although the reasoning of the CIT(A) is broadly in line with the reasoning adopted by us in ITA 1398/2023, to which reference has been made hereinabove, disallowance of expenditure incurred on “redoing the air-conditioning system” amounting to Rs. 60,098/-, has been sustained by the CIT(A) by holding that the same was a part of the scheme for renovation.

5. Against the order of the CIT(A), both the assessee as well as the revenue preferred appeals to the Tribunal. While the assessee’s appeal was confined to the disallowance amounting to Rs. 60,098/ which had been sustained by the Tribunal, the revenue was aggrieved by the the deletion of the remaining disallowances, amounting to Rs.72,49,483/-.

6. The relevant paras of the Tribunal’s order are extracted hereafter:

“6. We have, carefully considered the rival submissions and perused the paper book filed by the assessee. On examination of facts on record, we are of the view that the expenditure of Rs.71,45,416/- that has been incurred on fixing door shutters alone in the hotel room cannot be viewed to be mere replacement of worn out door shutters. The crux of the matter here is whether the expenditure is merely on replacement of an existing item that had



been damaged or worn out or it is an expenditure incurred with a view to bring in a substantially superior item in place of the existing item. From the bills furnished by the assessee in the paper book it is seen that the assessee purchased 300 guest room door shutters, 50 mm thick consisting of 3 mm teak veneer on both sides with melamine lacquer polish on both sides @ Rs.9,550/- and the assessee purchased 300 toilet door shutters of similar nature of 30 mm thick @ Rs.8,250/- per shutter from M/s. New Era Industries. Cost included hinges and fixing of locks etc. Similar expenditure was incurred by the assessee by way of payment of Rs.9,59,400/- to M/s Juneja Associates Pvt. Ltd. and Rs.13,80,016/- to M/s Sita Juneja Pvt. Ltd. for purchase and fixing of 234 guest room door shutters and 240 toilet door shutters. **The assessee, thus, purchased and installed 534 guest room door shutters and 540 toilet door shutters. It is not possible that all the door shutters in the hotel rooms got damaged or worn out at the same time during September-October, 1996. Apparently, the C assessee has replaced all guest room door shutters and of toilet door shutters with new items of very superior quality. No material has been brought on record as to the quality and cost of what existed prior to replacement. Prime facie the expenditure is in the nature of an attempt to bring superior look and functioning as compared to the existing one. In this context, the observations of the auditors of the company are significant. There is no doubt that the final word on the tax liability of the assessee need not come from the mouth of the auditor of the company. At the same time, the facts found as a result of statutory audit cannot be belied by merely saying that the auditor's word is not last word. The assessee is an advanced sophisticated organization and has appointed experienced and qualified Chartered Accountant. No reason has been brought on record as to how the learned auditors of the assessee company have committed an error in this behalf. Whether an expenditure is revenue nature or of capital nature is at the root of annual accounts to be prepared and certified by the auditor. In matters like this, principles of accountancy have to be attached due importance.** That has been stated by Hon'ble Supreme Court itself in relation to an issue of capital or revenue expenditure in the case of Challapali Sugars Ltd. Vs. CIT, 98 ITR 167 (SC) in the following words:-

“It would appear from the above that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of



production on such borrowed money can be capitalized and added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary."

In this case the fact that there is total replacement of shutters of all guest rooms and toilets therein, the rate of expenditure per piece, the auditor's report lead to inescapable conclusion that the expenditure is of capital nature. It is not an expenditure incurred to keep an existing asset to its full function but to substantially add to and enhance to the existing discarding the old asset by way of acquisition of the new asset. The argument of the assessee that no new asset or advantage was brought in is not acceptable. The assessee has hardly brought any material on record so as to convince us to take a view different from the valuable observation of the auditor of the company in discharge of his duty as an auditor. We, therefore, reverse the order of the learned CIT (Appeals) in so far as the expenditure of Rs.71,45,416/- on door shutters is concerned and restore the disallowance as made by the Assessing Officer.

7. As to the other items of Rs.32,000/- on bus bars; Rs.35,784/- for replacing the basin of cooling tower and Rs.36,283/- spent on fabricating a frame of mild steel for fixing the false ceiling, the fact remains that the same have been viewed as capital expenditure by the auditor of the company. The learned counsel for the assessee argued that these items purchased by the assessee were utilized in the nature of replacement. No material has been relied upon in this behalf. From the facts recorded by the Assessing Officer, it is seen that the expenditure of Rs.35,784/- is on replacement of the basin of the cooling tower, whereas the expenditure of Rs.32,000/- on bars and expenditure of Rs.36,283/- on fabricating a frame of mild steel for fixing the false ceiling do not appear to be in the nature of replacement. We, therefore, restore the disallowance of Rs.32,000/- and Rs.36,283/, also as made by the learned Assessing Officer.

8. First ground in assessee's appeal relates to the expenditure of Rs.60,098/- spent on re-doing the air conditioning system for the Shopping Arcade. The learned counsel referred to the bill issued by M/s Vaccair Engineers as at pages 12 and 13 of the paper book. He pointed out that the bill itself suggested that the expenditure was in the nature of repair and replacement. The bill referred to dismantling, repositioning, re-routing, removal and relocation and so on. Even otherwise, no new air conditioning system for the



Shopping Arcade could have been brought in existence from meager expenditure of Rs.60,098/-. The learned CIT(Appeals) was under an erroneous impression that the expenditure was part of a renovation and refurbishment programme undertaken by the assessee. That programme had already come to an end in October, 1994. On consideration of the matter, we see force in these contentions of the assessee. We, therefore, delete the disallowance of Rs.60,098/- as upheld by the learned CIT (Appeals).”

[Emphasis is ours]

7. Having perused the reasoning furnished by the Tribunal for disallowing the aforementioned items of expenditure cumulatively amounting to Rs. 72,13,699/-¹, we are of the opinion that the Tribunal erred in placing undue reliance on the observations of the appellant/assessee’s auditor and its annual accounts.

7.1. Apart from the aforesaid, the Tribunal also failed to apply the principle that expenditure incurred by an appellant/assessee to run its business effectively, efficiently and profitably, leaving the fixed assets untouched, would be an expense in the nature of revenue expenditure, even though the advantage obtained may for an extended period. In such a situation, the test of enduring benefit or advantage could be considered as having broken down.

7.2. Thus, the fact that the replacement has been undertaken such that a “superior” quality item has been installed, will not necessarily lead to the conclusion that the expenditure was in the capital field.

8. Concerning both the aforesaid aspects, we have made observations in the lead matter i.e., ITA 1398/2006, which concerns AY 1992-93.

¹
(i) Replacement of Door shutters: Rs.71,45,416/-
(ii) Fixing of Bus Bars: Rs. 32,000/-
(iii) Fabrication of frame for fixing the false ceiling: Rs. 36,283/-



9. 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* in the instant case as well:

10. The appellant/assessee will be entitled to claim the following deductions, as, in our opinion, they are in the nature of revenue expenditure:

- (i) Rs.71,45,416/- incurred on replacement of door shutters.
- (ii) Rs. 32,000/- incurred on fixing of bus bars.
- (iii) Rs. 36,283/- incurred on fabrication of frame for fixing the false ceiling.

11. Thus, the questions of law as framed are answered in favour of the appellant/assessee and against the revenue.

12. The appeal is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 9, 2023/aj