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

+ **INCOME TAX APPEAL No. 1104/2018**

Date of decision: 5th October, 2018

THE PR. COMMISSIONER OF INCOME TAX -7..... Appellant
Through Mr. Ruchir Bhatia, Advocate.

versus

RAMBAGH PALACE HOTELS PVT. LTD. Respondent
Through Mr. Aditya Vohra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Revenue in this appeal under Section 260A of the Income Tax Act, 1961 (Act, for short), which relates to Assessment Year 2003-2004 impugns the order dated 23rd March, 2018 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in the case of Rambagh Palace Hotels Private Limited (respondent-assessee).

2. The appeal arises from cross appeals ITA Nos. 6024/Del/2014 and 6097/Del/2014 filed by the respondent-assessee and Revenue, respectively before the Tribunal.

3. The appeal is confined and restricted to deletion of *ad hoc* disallowance of Rs.1,38,00,058/-, being 50% of Rs.2,76,00,116/- claimed as expenditure incurred on repair and maintenance of the hotel. The Assessing Officer in his order dated 07.03.2013 had referred to the complaint by one Rajkumar Devraj, and had reopened assessment under Section 147 read with Section 148 of the Act. The assessment order records that the respondent-assessee in response to notice dated 01.03.2013, had furnished list of vendors who had performed and undertaken repair and maintenance service. Four vendors had appeared before the Assessing Officer to substantiate genuineness of the expenditure and their statements were recorded on oath. Documents were also produced by the said vendors. The Assessing Officer held that the respondent-assessee had been able to establish genuineness of the expenditure from the said four vendors amounting to Rs.2,48,08,464/-. However, the respondent-assessee had not been able to produce confirmations or produce other vendors to whom payments of Rs.2,76,00,116/- had been made. The Assessing Officer made an *ad hoc* disallowance of Rs. 1,38,00,058/- . The Assessing Officer had also observed and held that payments to the vendors "Chandra Singh Contractor" and "National Sanitation" was capital in nature. However, the Revenue has not preferred the present appeal on the said aspect.

4. The Commissioner of Income Tax (Appeals) in order dated 29.08.2014, reduced the *ad hoc* disallowance from 50% to 5%, i.e., Rs. 13,80,005/-, after recording his reasons and observing that the respondent-assessee had produced invoices and ledgers of contractors. Payments made to the said contractors/vendors had also been accepted in subsequent years. Evidence on record, it was observed had established that the parties who had rendered the services were existing and genuine parties. At the same time the Commissioner of Income Tax (Appeals) held that there could still be some doubt about the existence of the said contractors and hence 5% disallowance was justified.

5. Thereupon, cross appeals as noticed above were preferred by the Revenue and the respondent-assessee to the Tribunal.

6. The Tribunal in the impugned order has referred to their earlier orders, as the Assessing Officer had made similar disallowances in other years. The Tribunal has held that the respondent-assessee had filed complete details of the said vendors, including their PAN, invoices raised, ledger accounts, etc. The Tribunal in these circumstances had followed earlier decision of the Coordinate Bench of the Tribunal in the case of the respondent-assessee for the Assessment Years 2006-07 and 2009-10.

Accordingly, the appeal filed by the Revenue was dismissed and the appeal filed by the respondent-assessee has been allowed, directing deletion of the *ad hoc* disallowance of expenditure.

7. The findings of the Tribunal are primarily factual. We do not see any perversity in the said findings. We may record that we have dismissed the appeal preferred by the Revenue making similar *ad hoc* disallowance for the Assessment Year 2005-06 vide order dated 17th September, 2018 in ITA No. 1014/2018. For the aforesaid, this appeal has no merit and is dismissed with no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

OCTOBER 05, 2018
VKR