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

+ ITA 160/2022 & CM APPL.24125/2022

PCIT MUMBAI 1

..... Appellant

Through: Mr. Sunil Agarwal, Advocate with
Mr. Tushar Gupta and Mr. Utkarsh
Tiwari, Advocates.

versus

ELEL HOTELS AND INVESTMENTS LTD

..... Respondent

Through: Mr. Gaurav Jain with
Ms. Akshita Goyal and Mr. Shubham
Gupta, Advocates.

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Date of Decision: 31st May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the order dated 16th February, 2021 passed by the ITAT in ITA No. 918/DEL/2010.
2. Learned counsel for the Appellant states that the Tribunal erred in holding that the payment of Rs.30.86 crores made to ITC Ltd. was revenue in nature without considering the fact that the assessee itself declared the same as capital expenditure in its return of income. He further states that the Tribunal erred in holding that the improvement in lease rights was not a capital expenditure in the hands of the assessee when in fact the payment to



ITC Ltd. was made to clear the defects in title of the hotel and hence the expenditure should be capitalized.

3. Learned counsel for the Appellant states that if the amount is a depreciable capital expenditure, depreciation cannot be given on the entire amount of capital expenditure of Rs.30.86 crores, when in fact, the payment so made is not only for the purpose of acquiring the building but also to acquire the land on which the hotel is located along with all the furniture and fixtures which are the part of the hotel.

4. A perusal of the paper book reveals that the petitioner is the owner of a hotel known as 'Hotel Sea Rock' in Mumbai which was initially being managed by ITC Ltd. under the Hotel Operator Agreement effective from 1986. In 1993 the hotel was severely damaged as a result of bomb blast during the riots in Mumbai. Thereafter, disputes and differences arose between the assessee and ITC Ltd., with respect to responsibility to repair and restore the damaged portion and other consequential issues. Subsequently, the assessee was in litigation with ITC Ltd.

5. Ultimately, the assessee company out of commercial expediency terminated the operator-cum-management agreement with ITC Ltd. and paid a sum of Rs.43.10 crores during the Assessment Year 2006-07 to ITC Ltd. who in turn handed over vacant and peaceful possession of the hotel property.

6. Accordingly, the issue that arises for consideration in the present appeal is whether a sum of Rs.30.86 crores paid by the respondent towards termination of Hotel Operator Agreement out of a total sum of Rs.43.10 crores is capital or revenue expenditure?



7. In the opinion of this Court, there has been no addition of capital asset of enduring nature in the hands of the respondent-assessee. In fact, after payment of Rs.30.86 crores there has been no change in the capital structure of the respondent-assessee.

8. It had paid Rs.30.86 crores to get back the possession of its own asset which had been given on license basis under the Hotel Operator Agreement. The Assessee has not acquired something that it did not already own or possess. This Court is of the view that the respondent-assessee spent Rs.30.86 crores to facilitate its business and trading operations. Accordingly, the test of capital expenditure as stipulated in *Empire Jute Co. Ltd. vs. CIT, (1980) 4 SCC 25, Commissioner of Income Tax vs. Madras Auto Service (P.) Ltd., (1998) 233 ITR 468, Commissioner of Income Tax, Bombay City-I vs. Associated Cement Companies Ltd., (1988) 172 ITR 257, Hindustan Times Ltd. vs. Commissioner of Income Tax, New Delhi, (1980) 122 ITR 977, CIT Vs. Bharat Aluminium Company Ltd., 2010 SCC OnLine Del 2618* is not satisfied in the present case.

9. Consequently, this Court is of the view that the compensation paid had arisen out of business necessity and is revenue expenditure. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed. Needless to state that the finding in the present case is based on the facts of the present case.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

MAY 31, 2022
AS