

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 4513, 4514/Del/2009
Asstt. Years: 2003-04, 2004-05

EL EL Hotels and Investments Ltd. C/o Claridges Hotel Pvt. Ltd. 12, Aurangzeb Road, New Delhi – 110 011 PAN AAACE2846D	Vs .	DCIT, Central Circle-13, New Delhi.
(Appellant)		(Respondent)

ITA No. 4431/Del/2009
Asstt. Year 2004-05

ACIT, Cent. Circle 13, New Delhi.	Vs.	EL EL Hotel & Investment Ltd. 2/40, Janpath, New Delhi PAN AAACE2846D
(Appellant)		(Respondent)

Assessee by:	Shri Ajay Wadhwa, Advocate Ms. Bharti Sharma, CA
Department by :	Ms. Nidhi Srivastava, CIT DR
Date of Hearing	31/07/2019
Date of pronouncement	18/10/2019

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

ITA No. 4513/Del/2009 is assessee's appeal against order of the Ld. CIT (Appeals)-II, Delhi for Assessment Year 2003-04 the date of the impugned order is 14.09.2009. ITA No. 4514/Del/2009 is also assessee's appeal and it pertains to assessment year 2004-05 which has been passed by the Ld. CIT(Appeals)-II, Delhi vide order dated 14.9.2009. ITA No. 4431/Del/2009 is department's cross appeal for Assessment Year 2004-05. All these appeals were heard together and are being disposed of together for the sake of convenience.

2. At the outset, the Ld. AR submitted that ITA No. 4431/Del/2009 being the department's appeal was liable to be dismissed at the threshold itself as the tax effect was below the prescribed tax limit. It was submitted that the disputed addition which has been restored to the ITAT by the Hon'ble High Court was only to the tune of Rs. 34,13,764/- on account of income accrued from ITC Ltd.

3. The Ld. CIT (DR) fairly accepted that the disputed addition of Rs. 34,13,764/- would result in a tax effect of less than Rs. 20

lacs and, therefore, the appeal was not maintainable before the ITAT in view of the CBDT Circular 3/2018 dated 20.08.2018.

5. With respect to the assessee's appeal bearing ITA No. 4513/Del/2009 for Assessment Year 2003-04 pertaining to disallowance of depreciation of Rs. 506,309/- in respect of assets leased to ITC Ltd, it was submitted that the issue had already been decided in favour of the assessee by the order of the ITAT vide order dated 16.4.2010 in Para 11. Similarly, in ITA No. 4514/Del/2009 in Assessment Year 2004-05, it was submitted that the first issue was disallowance of depreciation to the tune of Rs. 443,912/- on account of assets leased to ITC and this issue, as in Assessment Year 2003-04 had already been decided in favour of the assessee by the order of the ITAT vide order dated 16.4.2010. It was further submitted that the second issue in this appeal was disallowance of legal and professional expenses of Rs. 658,918/- which was not being pressed due to smallness of amount.

6. The Ld. CIT (DR), although, supported the order of the lower authorities, fairly accepted that the issue of depreciation stood covered in favour of the assessee by the order of the ITAT.

7. Having heard both the parties, we agree with the contention of the Ld. AR that the department's appeal bearing ITA No. 4431/Del/2009 is liable to be dismissed in view of the disputed tax being below the prescribed tax limit for filing of appeals before the ITAT by the department. Accordingly ITA No. 4431/Del/2009 stands dismissed. We further note that in ITA 4513/Del/2009 the issue of depreciation is already decided in favour of the assessee vide order of ITAT dated 16.4.2010. This issue is also identical in Assessment Year 2004-05 and is covered by the order of the ITAT likewise. Since, the assessee has not pressed the grounds relating to disallowance of professional charges the same is dismissed as not pressed.

8. In the final result ITA No. 4513/Del/2009 stands allowed, ITA No. 4514/Del/2009 stands partly allowed, ITA No. 4431/Del/2009 stands dismissed.

Order pronounced in the open court on 18th October, 2019.

sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 18.10.2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi