IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 61 OF 2014

COMMISSIONER OF INCOME TAX ... Appellant
Versus
M/S VASANT HOLIDAY HOMES (P) LTD., ... Respondent

Ms. Asha A. Desai, Advocate for the Appellant.
Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Braganza, Advocate for the Respondent.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 3rd March, 2015

ORAL ORDER

Heard Ms. Asha Desai, learned Counsel appearing for the Appellant and Shri J. E. Coelho Pereira, learned Senior Advocate appearing for the Respondent.

2. The above Appeal challenges the Order passed by the Tax Appellate Tribunal dated 20.03.2014 whereby the Appeal preferred by the Respondents was allowed and the expenditure claimed to have been spent by the Respondents to the tune of Rs.1,99,50,000/- was accepted for the purpose of computing the capital gains in respect of a transaction wherein a hotel premises were sold by the Respondents.

3. Ms. Asha Desai, learned Counsel appearing for the Appellants,

has pointed out that there is no evidence on record to substantiate the claim of the Respondents that a sum of Rs.1,99,50,000/- was in fact spent by the Respondents. Learned Counsel further pointed out that there were no vouchers or any material produced by the Respondents to substantiate such expenditure. Learned Counsel further submits that the Assessing Officer refused to accept such expenditure but, however, the Respondents preferred an Appeal before the Commissioner wherein some documents were allegedly produced in support of such contention. Learned Counsel further submitted that the Commissioner of Income Tax sought for a remand report from the Assessing Officer wherein the Assessing Officer after examining the property in question came to the conclusion that the expenditure incurred could be restricted to Rs.1.05 Crores only. Learned Counsel further submits that the Commission of Income Tax, thereafter, on perusal of the records, has accepted the expenditure for a sum of Rs.1,80,00,000/- approximately. Learned Counsel further pointed out that the Respondents thereafter challenged the Order of the Commissioner whereby the total expenditure of Ra.1,99,50,000/- was accepted by the Income Tax Appellate Tribunal. Learned Counsel further pointed out that the findings arrived at by the Tribunal are perverse, as according to the learned Counsel, there was no material on record to substantiate such claim and, as such, the Tribunal was not justified to allow the total expenditure allegedly incurred by the Respondents. Learned Counsel further pointed out that the remand report itself suggests that the documents in respect of such expenditure were lost in the floods and, as such, the Tribunal was not justified to allow such claim. Learned Counsel has taken us through the Orders passed by the Income Tax Appellate Tribunal to point out that the material which was not before the Commissioner was examined by the Tribunal without giving any opportunity to the Appellants to rebut or meet such documents. Learned Counsel as such pointed out that the Appeal deserves to be admitted on the substantial question of law as framed in the Appeal Memo.

4. On the other hand, Shri J. E. Coelho Pereira, learned Senior Advocate appearing for the Respondents, has pointed out that as per the Memorandum of Understanding executed way back in January, 2005, there is a specific condition that a sum of Rs.1,99,00,000/- was to be spent for the purpose of re-construction and repairs of the hotel premises which were in a dilapidated condition. Learned Senior Advocate further pointed out that such amount was fixed based on report from an Architect and approved designs. Learned Senior Advocate further pointed out that such expenditure was incurred for the assessing year 2005-06 as well as 2006-07 and that as far as the expenditure for 2005-06 is concerned, the assessment was complete accepting the expenditure incurred by the Respondents. Learned Senior Advocate further pointed out that the Income Tax Appellate Tribunal has rightly appreciated the evidence on record and accepted the expenditure for the assessment year 2005-06 and as such the question of refusing the veracity of the amount claimed by the

Respondents could not be justified. Learned Senior Advocate has thereafter taken us through the proposed substantial question of law and pointed out that no documents were produced before the Income Tax Appellate Tribunal but, however, the documents were produced along with the Appeal Memo and were before the authorities whilst deciding the Appeal preferred by the Respondents. Learned Senior Advocate further pointed out that the documents were also examined during the course of the remand report and, as such, the contention of the learned Counsel appearing for the Appellant that no documents were produced before the Income Tax Appellate Tribunal are contrary to the records before the Authorities. Learned Senior Advocate further pointed out that there are no substantial questions of law which arise in the present Appeal for consideration and, as such, the Appeal be rejected.

5. We have given our thoughtful consideration to the contentions advanced by the learned Counsel appearing for the parties and with their assistance, we have also gone through the records.

6. The only substantial question of law proposed by the Appellant reads thus:

(i) Whether the Income Tax Appellate Tribunal was justified to look into fresh material during the course of the hearing the Appeal preferred by the Respondents without giving an opportunity to the

Appellants to meet such document ?

7. On perusal of the records as well as the Order passed by the Tribunal, we find that there were no new documents produced before the Income Tax Appellate Tribunal. In fact, in the affidavit filed by the Respondents, it reveals that in fact the documents, if any, were produced along with the Appeal Memo filed before the Income Tax Appellate Tribunal. These documents and other material were examined by the Commissioner of Income Tax whilst disposing of the Appeal preferred by the Respondents. Apart from that, the Income Tax Appellate Tribunal whilst examining the Appeal preferred by the Appellant has taken not of the fact that in the Memorandum of Understanding executed between the parties in January, 2005, Clause (1) therein clearly stipulates that a sum of Rs.1,99,50,000/- was fixed as the amount of total cost for repairs/renovation and updations of the property in question. The authenticity and/or the veracity of the said documents were not disputed by the Appellants. In such circumstances, there was no material produced by the Appellants to disapprove the terms of the said Agreement.

8. The Tribunal has also taken note of the fact that as the Memorandum of Understanding was executed in 2005, the expenditure incurred by the Respondents in the Assessment year 2005-06 was accepted by the Revenue Authorities and, the

assessment for such year was already finalised. These aspects were taken note of by the Income Tax Appellate Tribunal to come to the conclusion that the Appellants were entitled to claim such expenditure. The findings of the Tribunal are on the basis of appreciating the evidence on record and we find no perversity in such finding based on evidence. In fact, considering that for the assessment year 2005-06 the expenditure was already partly accepted, it was not open to the Authorities to dispute such expenditure. Besides that, the fact that such renovation and repairs were carried out to the premises by the Respondents, has not been disputed by the Revenue Authorities.

9. In such circumstances, we find that the findings of the Tribunal whilst disposing of the Appeal preferred by the Respondents cannot be said to be perverse or by misreading any material produced on record. Hence, we find no merit in the above Appeal which stands accordingly rejected.

K. L. WADANE, J. F. M. REIS, J.

arp/*