IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

ITA.No. 217 of 2015

(AGAINST THE ORDER DATED 9.1.2015 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN ITA 170/2014)

APPELLANTS:

M/S.ESCAPADE RESORTS PVT. LTD
UNIT : MARAI BEACH
C/O CASINO HOTEL, WILLINGTON ISLAND
COCHIN 682 003 REPRESENTED BY ITS DIRECTOR MR.JOSE DOMINIC
PAN AAACE5978L

BY ADVS.SRI.JOSEPH MARKOSE (SR.)
SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC

RESPONDENTS:

THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 1(1)
KOCHI - 682 018.

R BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA.No. 217 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE ORDER DATED 13/9/2001 ISSUED BY THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTION), KOLKATA.

ANNEXURE B: TRUE COPY OF ASSESSMENT ORDER DATED 20.12.2011 PASSED BY THE ASSESSING OFFICER FOR AY 2009-2010.

ANNEXURE C: TRUE COPY OF THE ORDER DATED 31.3.2014 OF THE COMMISSIONER OF INCOME TAX I, COCHIN FOR AY 2009-2010.

ANNEXURE D: TRUE COPY OF APPEAL DATED 16.4.2014 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH FOR AY 2009-2010.

ANNEXURE E: CERTIFIED COPY OF THE IMPUGNED ORDER DATED 09-01-2015 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH IN ITA NO.170/COCH/2014 FOR AY 2009-2010.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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I.T.A.No.217 of 2015

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Dated this the 30th day of July, 2015

JUDGMENT

Antony Dominic, J.

The issue raised in this appeal is regarding the correctness of the finding of the Tribunal in its order in ITA 170/14 that the initial assessment year for the purpose of Section 80IA of the Income Tax Act is the assessment year 1999-2000.

2. According to the Senior counsel appearing for the appellant, the benefit of Section 80IA can be availed only on satisfaction of condition No.(v) prescribing that the hotel is for the time being approved by the prescribed authority. It is pointed out that by Annexure A order dated 13.9.2001 the Prescribed Authority granted approval only with effect from 12.4.1999 relevant to the assessment year 2000-2001. On this basis, counsel contends that the order of the Tribunal affirming the orders of the lower authorities that the initial assessment year is 1999-2000 is incorrect.

3. Although this contention would appear to be attractive, we find that in Section 80IA itself, the term 'initial assessment year' has been defined as the assessment year relevant to the previous year in which the hotel has started functioning its business. Admittedly, the hotel has started business in the previous year relevant to the assessment year 1999-2000. Therefore, even if the approval of the authority is with effect from 12.4.1999, the Tribunal could have decided the issue only in the light of the definition of the term 'initial assessment year' contained in Section 80IA. If that be so, the view taken by the Tribunal that the initial assessment year is 1999-2000 cannot be faulted.

4. True, the assessee could have claimed the benefit of Section 80IA only after approval has been granted by the prescribed authority and that approval is only with effect from 12.4.1999. However, that does not enable the assessee or the Tribunal to postpone the initial assessment year which term is statutorily prescribed and fixed. On the other hand, if the

prescribed authority had wrongly fixed the date of commencement of the business, it was for the assessee to get that error committed rectified in appropriate proceedings, which has not been done in this case.

For these reasons, we do not find any illegality in the view taken by the Tribunal for us to entertain this appeal. Appeal fails and it is accordingly dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
SHAJI P. CHALY
JUDGE

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