IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

ST.Rev..No. 121 of 2011 ( )

AGAINST THE ORDER/JUDGMENT IN TA 19/2011 of K.A.I.T &
S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD DATED 20-06-2011

PETITIONER(S)/RESPONDENTS/ASSESSEE:

V.M.G.R.HOTELS AND RESORTS (P) LTD.
VALLANGHY, NENMARA, REP. BY ITS MANAGING DIRECTOR
K.MOHANKUMAR.

BY ADVS.SRI.T.M.SREEDHARAN (SR.)
SMT.NISHA JOHN
SRI.V.P.NARAYANAN
SMT.BOBY M.SEKHAR

RESPONDENT(S)/APPELLANT/REVENUE:

STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

R BY SR GOVERNMENT PLEADER SRI.LIJU STEPHAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 15-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX IN STRV.121/11

PETITIONER'S EXHIBITS:

ANNEXURE A: TRUE COPY OF PRE-ASSESSMENT NOTICE DATED 5.3.2010 ISSUED BY THE COMMERCIAL TAX OFFICER, CHITTUR, PALAKKAD DISTRICT.

ANNEXURE B: TRUE COPY OF ASSESSMENT ORDER DATED 19.4.2010 PASSED BY THE COMMERCIAL TAX OFFICER, CHITTUR, PALAKKAD DISTRICT.

ANNEXURE C: TRUE COPY OF THE ORDER IN STA NO.295/2010 DATED 22.11.2010 PASSED BY THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, KANNUR, CAMP AT ERNAKULAM.

ANNEXURE D: TRUE COPY OF THE DATED 20.6.2011 IN TA NO.19/2011 PASSED BY THE AIT & ST APPELLAT TRIBUNAL, ADDITIONAL BENCH, PALAKKAD.

/TRUE COPY/

PS TO JUDGE

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

S.T.Rev.121 of 2011

Dated this the 15th day of June, 2015

JUDGMENT

Antony Dominic, J.

1. This revision is filed by the assessee which is a three star bar hotel and the assessment year relevant is 2007-08.

2. Annexure A is a notice issued by the Assessing Officer under section 17(3) of the KGST Act proposing to reject the books of accounts of the assessee and to complete the assessment under section 17(3) in the manner as proposed therein. The assessee filed their objections and the assessment was completed as proposed, by Annexure B order. In that order, referring to the various facts as disclosed in the course of the proceedings, the Assessing Officer added 50% of the turn over of the assessee towards profit and on that basis, completed the assessment. The appeal filed by the assessee before the Deputy Commissioner was allowed by Annexure C order, where the assessment order was set aside and the matter was remitted to the Assessing Officer to

complete assessment accepting the books of accounts. The Revenue challenged the order of the appellate authority before the Tribunal and the Tribunal, by Annexure D order, allowed the appeal and set aside the order of the first appellate authority. It is this order which is challenged by the assessee before us.

3. We heard learned counsel for the petitioner and the learned Government Pleader appearing for the respondent.

4. The only question arises is whether the order of the Tribunal setting aside the first appellate authority's order which directed the Assessing Officer to accept the books of accounts of the assessee and complete the assessment afresh, warrants interference.

5. Reading of the Tribunal's order shows that the assessee had filed its annual return for the year in question disclosing a total turn over and taxable turn over of ₹2,17,36,197/- and nil respectively.

The profit conceded by the dealer was 34.87%. The purchase value of the goods sold was ₹1,61,15,773/- and the total sales turn over conceded was ₹2,17,36,197/- as stated above. It is based on this account, profit was quantified as ₹56,20,427/- which works out to 34.87%. The Assessing Authority found that dealers in similar business conceded 50% to 60% as the profit. The Assessing Authority also found that for three star bar attached hotels, permission was granted for compounding at 170% of the purchase value of IMFL. It was also found that though the declared profit of the assessee was ₹64,03,399/-, the expenses incurred by the assessee, including the licence fee paid for the year, was ₹71,64,207/- and payment to the employees was ₹11,55,592/-. This showed that the assessee had incurred an excess expenditure of ₹19,16,460/- during the year in question in addition to the gross profit earned by them. There was no explanation whatsoever either in the books of accounts or profit and loss account or cash flow statement about the source from which this excess amount of ₹19,16,460/- was obtained by the assessee. All these indicated that the assessee would have earned this additional income only from the business in question which necessarily means that there was non-disclosure of actual turn over in the books of accounts. This, essentially, is the basis which prevailed upon the Assessing Authority to estimate profit of the assessee at 50%.

6. Reading of the order passed by the Tribunal shows that it was relying on the aforesaid grounds that the Tribunal has restored the assessment order passed under section 17(3) of the KGST Act. We do not find anything illegal in the order of the Tribunal to be interfered with.

Revision fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.