THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A.No.83 of 2015

JUDGMENT: (per Hon'ble Sri Justice G. Chandraiah)

This appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') is filed by the Department, feeling aggrieved by the order dated 02.01.2015 passed in I.T.A.No.619/Hyd/2013 by the Income Tax Appellate Tribunal, Hyderabad Bench-B, Hyderabad (for short 'the Tribunal') relating to the Assessment year 2007-2008.

Brief facts of the case are that the respondent is a company running restaurants and hotel. In response to notice under Section 153A of the Act, it filed its return of income for the assessment year 2007-08 on 30.10.2007. The Assessing Officer noticed that during the financial year the respondent along with family members had purchased a building and after three months of purchase it sold the fourth floor and reduced the cost of acquisition from the fixed assets and claimed depreciation in respect of the newly acquired asset. The Assessing Officer by order dated 29.12.2011 held that the transaction of purchase of property and selling of one floor of that property was in the nature of business and trade, and accordingly brought the profits to tax and disallowed the depreciation and completed the assessment determining the total income. Aggrieved by the same, the respondent filed an appeal before the Commissioner of Income Tax (Appeals)-III, Hyderabad.

The Commissioner of Income Tax through order dated 05.02.2013 while observing that the transaction of purchase of building and the sale of only one floor of the building cannot be taken as a business transaction i.e., adventure in the nature of trade, allowed the appeal in favour of the respondent/appellant. Aggrieved by the same, the Department filed I.T.A.No.619/HYd/2013 before the Tribunal.

The Tribunal after considering the rival contentions held that it was not in dispute that the property was purchased for business purposes and used as such. It was also not in dispute that the assessee sold 4th floor and accounted the gain as profit on sale of fixed assets in P & L account. However, in income tax computation, the gain was adjusted in the depreciation schedule as part of block of assets thereby claiming depreciation only on the balance amount. This working adopted by the assessee in I.T., computation is in accordance with the provisions of Income Tax Act, more particularly, Section 43(6) of the Act, and upheld the order of Commissioner of Income Tax and dismissed the Revenue grounds vide impugned order. Aggrieved by the same, the Department filed the present I.T.T.A.

The contention of the appellant herein is that the sale consideration received by the respondents is a revenue receipt and hence the same has been treated as business income.

We are unable to accept the said contention since both the authorities after analysing the facts concurrently held that the working adopted by the respondent in I.T. computation was in accordance with the provisions of the Act and that the purchase of property and selling of one floor is for the purpose of repaying a portion of high interest bank loan to lower its interest burden but not as a vendor in real estate business. Therefore we see no reason to interfere with the concurrent findings of the Courts below.

We therefore dismissed the appeal. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

G. CHANDRAIAH, J.

CHALLA KODANDA RAM, J.

9th July, 2015

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