HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

**I.T.T.A.No.757 OF 2014**

DATED: 23.01.2015

Between:

The Commissioner of Income Tax I, Hyderabad

… Appellant

and

Dhatri Constructgions Pvt. Ltd

… Respondent

**THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**
**AND**
**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**I.T.T.A.No.757 of 2014**

**JUDGMENT:** **(per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)**

This appeal is sought to be preferred and admitted against the judgment and order of the learned Tribunal dated 15.03.2013 in relation to the assessment year 2006-07 in I.T.A.No.2185/Hyd/2011 on the following suggested question of law.

> "Whether, the Tribunal having accepted that the assessee failed to furnish the corroborative evidence in support of the claim of expenditure is correct in law in restricting the disallowance to 10% of the total expenditure as against 30% of the total expenditure sustained by the CIT(A)?"

We have heard Mr. J.V.Prasad, learned counsel for the appellant and gone through the impugned judgment and order of the learned Tribunal.

We notice in this matter that the issue is with regard to the extent of disallowance of expenditure incurred on account of development of the land. The Assessing Officer disallowed the entire expenditure claimed by the assessee. However, the Commissioner of Income Tax after considering the material placed before him allowed 30% disallowance.

Mr. J.V.Prasad says that 30% disallowance is reasonable in the given facts and circumstances. According to him, the learned Tribunal should not have been interfered with this.

We are of the view that the learned Tribunal has taken note of the material and then thought it fit, in its own discretion, that 10% disallowance should be justified. After appreciating the fact with regard to the nature of the development done by the assessee in the land and considering the document, namely, voucher, placed before it, the learned Tribunal exercised its discretion. We don't think that its discretion is an arbitrary one or exercise thereof is based on no material. Under the circumstances, we cannot substitute our discretion to interfere with the impugned judgment and order of the learned Tribunal. Substituting discretion cannot be a point of law, which is sought to be asked before us.

Therefore, we dismiss the appeal. No order as to costs.

**K.J. SENGUPTA, CJ**

23rd JANUARY, 2015.

**SANJAY KUMAR, J**

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