<u>HIGH COURT OF JUDICATURE AT HYDERABAD</u>
<u>FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH</u>

PRESENT

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

<u>I.T.T.A.No.337 OF 2014</u>

DATED:19.03.2015

Between:

Commissioner of Income Tax-III,
IT Towers, A.C.Guards,
Masab Tank, Hyderabad.

…Appellant.

And

M/s. Sandhya Hotesl (P) Ltd.,
16-2-738/F/B/1/A, Srivatsam,
Asmangadh, Malakpet, Hyderabad.

… Respondent.

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

I.T.T.A.No.337 OF 2014

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

This appeal is sought to be preferred and admitted on the following suggested questions of law:

> "1. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in remitting the matter to the assessing officer to adopt the valuation of property sold by the respondent – assessee in accordance with Rule 3 read with Rule 4 of Schedule III of Wealth Tax Act, 1987 as directed by the Hon'ble Tribunal (ITAT) in the connected case, to determine the income of the respondent – assessee despite the fact that the assessing officer has adopted the value of subject property based on the report of the approved valuer seized from the premises of the respondent – assessee?
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> 2. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in upholding the finding of the learned Commissioner of Income Tax (Appeals) that the income and sale of property by the respondent – assessee is a business income, then the assessing officer treated the same as capital gains as the respondent – assessee has shown the subject property as fixed asset.
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> 3. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in confirming the order of the learned Commissioner of Income Tax (Appeals) though the learned Commissioner of Income Tax (Appeals) had not afforded an opportunity to the assessing officer before admitting the balance sheet schedules which are contradictory to the schedules filed in the return of income."

We have heard Mr. B.Narasimha Sarma, learned counsel for the appellant, and gone through the impugned judgment and order of the learned Tribunal in relation to the assessment year 2006-2007.

It appears the learned Tribunal on fact found that the assessee was purchasing and selling the land and immovable property and the income derived therefrom initially was shown as short term capital gain. However, on detection of the audit, the said transaction was found to be business income treating the immovable property as stock in trade. The learned Tribunal further found that it was an inadvertent mistake and the same was corrected. Therefore, it was not really a case of short term capital gain and has to be treated as income from business having regard to fact. We thus, find no element of law is involved for adjudication in this matter.

So far as the second point is concerned, the learned Tribunal following the judgment of the Coordinate Bench in the case of **ACIT vs. Sri P. Srinivasa Reddy** (ITA.No.1487/Hyd/2008 dated 16.11.2012) has remanded the matter for valuation of the property. We do not find any element of law to interfere with the same.

Hence, the appeal is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

19.03.2015

GJ/ES