In the High Court of Judicature at Madras

Dated : 02.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

T.C.A.No.1382 of 2007

The Commissioner of Income Tax,
Chennai. ...Appellant

Vs

M/s.MGM Diamond Beach Resorts
(P) Ltd., Chennai-4. ...Respondent

APPEAL under Section 260-A of the Income Tax Act against the order dated 16.3.2007 made in I.T.A.No.1336/Mds/2001 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai.

For Appellant : Mr.T.R.Senthilkumar
For Respondent : Mr.A.S.Sriraman for Mr.S.Sridhar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal was admitted on 30.10.2007 on the following substantial questions of law :

> *"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the Revenue could not raise the grounds on the issue of whether the expenditure in question was capital or revenue in nature, since it had not been raised at any earlier stage and did not arise out of*

the order of the Commissioner of Income Tax (Appeals) ? and

(ii) Whether in the facts and circumstances of the case, the expenditure incurred in erection of a newly acquired roller coaster is a capital expenditure or a revenue expenditure ?"

2. Heard Mr.T.R.Senthilkumar, learned counsel for the Revenue and Mr.A.S.Sriraman, learned counsel for the assessee.

3. The assessee returned a total income of about Rs.3,35,21,391/- before allowing depreciation. After deducting depreciation, the Assessing Officer wanted to add disallowance towards maintenance expenses of roller coaster machine to the extent of Rs.26,17,200/-. Whether this addition towards disallowance was correct or not was the issue that went upto the Tribunal and decided in favour of the assessee.

4. In other words, the dispute is confined to the disallowance of Rs.26,17,200/-, on which, the tax implication at 35% works out to Rs.9,16,020/-. Therefore, the case on hand is covered by Circular No.21/2015 dated 10.12.2015 issued by the Central Board of Direct Taxes.

5. Accordingly, the appeal is dismissed. The questions of law are left unanswered. No costs.

02.2.2016

Internet : Yes

To
The Income Tax Appellate Tribunal, 'B' Bench, Chennai.
RS

<u>V.RAMASUBRAMANIAN,J</u>
<u>AND</u>
<u>N.KIRUBAKARAN,J</u>

RS

T.C.A.No.1382 of 2007

02.2.2016