IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-11-2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

T.C.A.Nos.8 of 2010, 479 of 2011 & 407 of 2012

T.C.A.Nos.8 of 2010 & 407 of 2012 :

M/s.Gems Park Hotels Pvt.Ltd. .. Appellant in both appeals

Vs.

The Assistant Commissioner of Income-tax,
Circle-I,
Income-tax Office, Offiers Line,
Vellore - 632 001. .. Respondent in both appeals

T.C.A.No.479 of 2011 :

The Commissioner of Income-tax-VIII,
Chennai. .. Appellant

Vs.

M/s.Gems Park Hotels Pvt.Ltd. .. Respondent

T.C.A.No.8 of 2010 is filed under Section 260-A of the Income Tax Act against the order, dated 21.08.2009, in ITA No.1952/Mds/2008 on the file of the Income Tax Appellate Tribunal, Chennai "B" Bench.

T.C.A.No.479 of 2011 is filed under Section 260-A of the Income Tax Act against the order, dated 10.02.2011, in ITA No.1432/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.407 of 2012 is filed under Section 260-A of the Income Tax Act against the order, dated 19.06.2012, in ITA No.2085/Mds/2011 on the file of the Income Tax Appellate Tribunal, Chennai "A" Bench.

For appellant in T.C.A.Nos.8/2010, 407/2012 &
respondent in T.C.A.No.479/2011 :
Mr.Suhrith Parthasarathy

For respondent in T.C.A.Nos.8/2010, 407/2012 &
appellant in T.C.A.No.479/2011 :
Mr.Swaminathan,
assisted by M/s.K.Suresh Kumar & Pushpa.

JUDGMENT

(Judgment of the Court was delivered by Nooty.Ramamohana Rao,J.)

All these appeals are comprehensively tried together, as they arise from and out of the same set of facts, relating to the same assessee, and for the same assessment year 2005-2006.

2. Heard Mr.Suhrith Parthasarathy, learned counsel for the assessee, and Mr.Swaminathan, learned Standing Counsel for the Department.

3. The assessee is running a retail business. In the previous year relevant for the assessment year 2005-2006, the assessee constructed a hotel building at Thiruvannamalai, declaring its cost of construction as Rs.1,33,10,465/-. The Assessing Officer did not accept the same and, instead, referred the valuation to be estimated by the District Valuation Officer, who estimated the valuation of the property at Rs.2,03,00,435/-. Not satisfied with the objections lodged by the assessee with regard to the valuation estimated by the District Valuation Officer, the differential cost of construction amounting to Rs.69,89,535/- was treated as unexplained investment made by the assessee and, it was on this basis, the assessment was completed on 28.12.2007. Aggrieved by the said order of assessment, the assessee preferred an appeal before the Commissioner of Income-Tax (CIT) (Appeals), Chennai, who, by his order, dated 10th July,2008, deleted the addition made by the Assessing Officer, on the ground that the Assessing Officer did not record any reasons as to why the estimate of valuation of the property was required to be referred to the District Valuation Officer. Calling

in question the correctness of the order, dated 10th July,2008, passed by the Commissioner of Income-Tax (Appeals), the Department went in further appeal to Income-Tax Appellate Tribunal (ITAT), by instituting ITA No.1952/Mds/2008. The ITAT, by its order, dated 21st August,2009, allowed the appeal, by setting aside the order, dated 10th July,2008, of the CIT (Appeals), and restored the order of assessment, dated 28.12.2007, passed by the Assessing Officer. It is against the said order of ITAT, dated 21st August,2009, the assessee has preferred T.C.A.No.8 of 2010.

4. When I.T.A.No.1952/Mds/2008 was pending before the ITAT, on 20th March 2009, the assessee filed an application under Section 154 of the Income Tax Act before CIT (Appeals), seeking rectification of the order passed by him earlier on 10th July,2008. Unfortunately, both sides have failed to bring it to the notice of ITAT, which heard and decided ITA No.1952/Mds/2008 about the pendency of the application filed under Section 154 of the Act, moved on 20th March,2009, by the assessee. It was further unfortunate that entertaining the rectification application under Section 154, CIT (Appeals) passed orders on 08th October,2010, without obviously noticing that the original order passed by him on 10th July,2008, was already set aside by the Tribunal sitting in appeal thereon on 21st August,2009.

5. On 10th September,2009, the assessee also approached ITAT, by instituting ITA No.1432/Mds/2009, challenging the correctness of the order passed by CIT (Appeals), dated 10th July,2008, only on the ground that no attempt has been made by CIT (Appeals) to resolve the controversy on merits, notwithstanding the order passed by ITAT earlier on 21st August,2009, in the appeal preferred by the Department against the very same order of CIT (Appeals), dated 10th July,2008, and, after condoning the delay in presenting the appeal of the assessee, ITAT entertained ITA No.1432/Mds/2009 and allowed the said appeal by its order, dated 10th February,2011. Thus, there are <u>two conflicting orders passed by ITAT; one on 21st August 2009 and the other on 10th February,2011, in two different appals</u>, one preferred by the Department in ITA No.1952/Mds/2008 and the other preferred by the assessee in ITA No.1432/Mds/2009, which appeals are, in turn, directed <u>against the same order of CIT (Appeals), dated 10th July 2008</u>. This incongruity could have been avoided by the Tribunal. (emphasis supplied)

6. Be that as it may, the revenue has come in appeal to this Court by preferring TCA No.479 of 2011 against the orders passed on 10th

February,2011, by ITAT in ITA No.1432/Mds/2009, preferred by the assessee.

7. Once again, both the assessee and the Department have gone in appeal against the order passed on 08th October,2010, by CIT (Appeals) in the application moved under Section 154 by the assessee. ITAT, by its order, dated 19th June,2012, dismissed the appeals preferred by both the assessee and the Department and confirmed the order, dated 08th October,2010, of CIT (Appeals) passed in the rectification application moved by the assessee. It is against this common order, dated 19th June,2012, of ITAT passed in ITA Nos.2085/Mds/2010 and 187/Mds/2011, TCA No.407 of 2012 has been preferred by the assessee.

8. The narration of the above facts has already brought out the incongruous situation. If only the Tribunal, at the stage of condoning the delay in preferring ITA No.l432/Mds/2009, realised that it had already passed an order earlier on 21st August,2009, in the appeal preferred by the Department against the order, dated 10th July,2008, of the order of CIT (Appeals), it would not have led to a different order being passed subsequently by it on 10th February,2011. Similarly, CIT (Appeals) if only had realised that the order passed by him originally on 10th July,2008, has

merged in the order passed by ITAT on 21st August,2009, he would not have passed another order on 08th October,2010, in the rectification application moved by the assessee.

9. It is in the above context, we have mooted an idea with the learned counsel appearing on both sides that the matter deserves to be remitted back to CIT (Appeals) for consideration afresh. Though both the learned counsel are not in complete agreement with our suggestion, we find that it will be improper for us to deny to either party the advantage of placing its viewpoints before the Commissioner of Appeals comprehensively and in proper perspective too.

10. In the peculiar facts prevailing on record and taking judicial notice of the fact that the adjudicating body should not normally decide separately two different appeals arising out of one and the same proceeding and then decide them independently and arrive at two different conclusions, as the orders of adjudication are required to lead to one conclusion but not to two different and opposite conclusions, we feel, that the exercise needs to be carried out afresh.

11. In that view of the matter, we consider that ends of justice would be better served by setting aside the orders passed on 21st

August,2009, by the ITAT in ITA No.1952/Mds/2008, and 10th February,2011, passed in ITA No.1432/Mds/2009, and also the order, dated 19th June,2012, passed in ITA Nos.2085/Mds/2010 and 187/Mds/2011. Accordingly, the same are set aside. Similarly, we also set aside the order, dated 10th July,2008, in ITA No.160/07-08 and also the order, dated 08th October,2010, in the application moved under Section 154 of the Act in M.P.No.5/09-10, passed by CIT (Appeals), and restore the appeal preferred by the assessee to the file of CIT (Appeals). While dealing with the said appeal, both sides will have a fair and reasonable opportunity of making their respective viewpoints known both on merits and the competence of the Assessing Officer in making a reference to the District Valuation Officer.

12. We hope and trust that CIT (Appeals) will spare adequate consideration for the matter on merits, uninfluenced by any of the observations made in the order passed by ITAT or by himself earlier and decide the appeal of the assessee as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment.

13. All these three appeals stand disposed of accordingly. No costs.

(N.R.R.,J.) (A.S.M.,J.)
07-11-2016

Index: Yes / No
Internet: Yes / No
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Note to Office :

Registry is directed to communicate a copy of this order to the jurisdictional CIT (Appeals) at Chennai.

To

1.The Registrar,
Income Tax Appellate Tribunal, "C" Bench,
Chennai.

2.The Registrar,
Income Tax Appellate Tribunal, "A" Bench,
Chennai.

3.The Assistant Commissioner of Income-tax,
Circle-I,
Income-tax Office, Offiers Line,
Vellore - 632 001.

4.The Commissioner of Income-tax-VIII,
Chennai.

NOOTY.RAMAMOHANA RAO, J.
AND

DR.ANITA SUMANTH, J.

dixit

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