IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

T.C.A.NO.593 OF 2017

Principal Commissioner of Income Tax I,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai. .. Appellant

-vs-

M/s.Om Shakthy Hospitalities Pvt. Ltd.,
T.S. 64, Sidco Industrial Estate,
Guindy, Chennai 600 032. .. Respondent

Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order dated 28.06.2016 passed in I.T.A.No.960/Mds/2015 by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai, in respect of the Assessment Year 2011-12. which was preferred against the orde of the Commissioner of Income Tax (Appeals), Chennai-34 in ITA.NO.201/14-15 dated 28.01.2015 preferred against the order of the Deputy Commissioner of Income Tax, Central Circle-III(1), Investigation Wing in PAN/GIR.NO.AAB CO 0105 A Assessment order made under section 143(3) for the Assessment year 2011-2012 dated 31.03.2014.

For Appellant : Mr.T.R.Senthil Kumar

JUDGMENT

(Order of the Court was made by T.S.Sivagnanam, J.)

Heard Mr.T.R.Senthil Kumar, learned Standing Counsel for the appellant/Revenue.

2.This appeal by the Revenue is directed against the order dated 28.06.2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai, in I.T.A.No.960/Mds/2015 and has been filed raising the following substantial questions of law:

i. Whether the Tribunal was correct in law in remitting the issue to the file of the Assessing Officer when the assessee has not carried on any business at any time during the previous year as mentioned in Section 28(1) of the Income Tax Act and therefore, is not eligible for claim of expenditure under the head "profits and gains of Business or Profession" ?

ii. Whether the Tribunal was correct in law, mere obtaining of the underground licence and permission of Food adulteration licence in the previous year amounts to carrying of business at any time during the previous year as required under section 28(1) of the Income Tax Act, 1961 ?

iii. Whether the Tribunal was right in remitting the issue to the file of the Assessing Officer with a direction to consider fresh evidence filed first time before it, even after the fact that the assessee submitted during the course of assessment proceedings that the inauguration of hotel "RR Inn" was conducted on 02.05.2011 and as such, the evidence has no relevant to the assessment year under consideration?

3.Before we examine as to whether a substantial question of law arises for consideration in this appeal, it will be necessary to take note of certain facts and the purport of the order passed by the Tribunal.

4.The question, which was focussed by the assessee before the Tribunal was on the business of the assessee company, which was already set up and the expenditure incurred before the commencement of commercial operations and these operational expenditure are in the nature of revenue and to be allowable under Section 37(1) of the Income Tax Act, 1961. Before the Tribunal, the assessee filed a paper book containing several documents to establish their stand. The documents, which were placed before the Tribunal, were, in fact, not placed before the Assessing Officer or before the Commissioner of Income-Tax (Appeals) [in short 'CIT (A)], but, for the first time, before the Tribunal. Therefore, the Departmental Representative objected to the production of the documents before the Tribunal for the first time. However, the Tribunal, by the impugned order, remanded the matter to the Assessing Officer for fresh consideration. This order is being put to challenge by the Revenue by way of this appeal.

5.The Tribunal, being a fact-finding authority, was fully justified in accepting the additional documents placed before it, especially when there is no malafide pleaded against the assessee. In order to verify the correctness of the stand taken by the assessee as to whether the operational expenses are in the nature of revenue and to be allowed under Section 37(1) of the Act, the Tribunal thought fit that the matter should be sent back to the Assessing Officer to examine the facts.

6.We find that there is no question of law arising for consideration in this appeal, as the matter revolves on factual matrix. Thus, we are not inclined to entertain this appeal.

Accordingly, this Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sra
To

1. The Judicial Member,
   Income Tax Appellate Tribunal,
   "A" Bench, Chennai.

2. The Principal Commissioner of Income Tax-I,
   No.108, Mahatma Gandhi Road,
   Nungambakkam, Chennai.

3. The Commissioner of Income-Tax
   (Appeals), Chennai-18.

4. The Deputy Commissioner of Income Tax,
   Central Circle III (1), Chennai.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.87046

T.C.A.No.593 of 2017

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