IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 62 OF 2017

THE PRINCIPAL COMMISSIONER OF INCOME TAX, PANAJI., ... Appellant

Versus

HERITAGE PRINCES REAL ESTATE DEVELOPERS., ... Respondent

Ms. Susan Linhares, Advocate for the Appellant.
Mr. D. E. Robinson, Advocate for the Respondent.

Coram:- SHANTANU S. KEMKAR & NUTAN D. SARDESSAI, JJ.

Date:- 8th January 2018

P.C.

Heard the learned counsel for the Appellant as also the learned counsel for the Respondent on the question of admission.

2. This appeal is directed against the order dated 11 May 2016 (Exhibit-C) passed by the Income Tax Appellate Tribunal, Panaji Goa, in ITA No.23/PAN/2016 (for short 'Tribunal') whereby the Tribunal has affirmed the order dated 23 November 2015 passed by the Commissioner of Income Tax (Appeals), Panaji Bench.

3. The Assessing Officer vide order dated 18 March 2015 (Exhibit A) disallowed the claim towards the expenses of Rs.80

lakhs.

4. In appeal filed by the assessee the question before the Commissioner was in regard to deletion of disallowance made by the Assessing Officer of Rs.80 lakhs on account of provisions of construction expenses. The Commissioner (Appeals) examined the contentions of both sides and has recorded the finding that the Appellant has shown the income from the project "Heritage Princess" on completion of the project, as the Appellant follows the mercantile system of accounting and outstanding expense of Rs.80 lakhs relates to the said project. The Commissioner also found that though the expenses were not incurred during the year under consideration, the liability had crystallized. The Commissioner after considering the law laid down by the Supreme Court in the case of Rotork Controls India (P) Ltd. vs CIT, (2009) 314 ITR 62(SC) holding that any provision made for the obligation of expenses to be incurred in future against the current years sale is an allowable expenses, on facts found that the expenses were incurred by the assessee in the months of April to June 2012 which is within three months of the year end. He was also of the opinion that in all likeliness the same relates to the completed project. In the circumstances, the Commissioner (Appeals) has recorded a finding that the outstanding of Rs.80 lakhs related to the completed project is an allowable expense and addition made on this account deserves to be deleted.

5. On challenge being made by the Revenue to the order passed by the Commissioner (Appeals) the Tribunal affirmed the order of the Commissioner (Appeals) by dismissing the appeal of the Revenue.

6. Having considered the rival submissions, we are of the view that no case is made out to interfere into the concurrent finding of fact recorded by the Commissioner and the Tribunal. Both the authorities have correctly applied the law laid down by the Supreme Court in the case of Rotork Controls India (P) Ltd. (supra). We do not find any substantial question of law involved in the matter.

7. In the circumstances, we dismiss the appeal.

NUTAN D. SARDESSAI, J. SHANTANU S. KEMKAR, J.

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