IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1332 to 1336 of 2008

Commissioner of Income Tax-I,
Tiruchirapalli .. Appellant
(in all Tax Case Appeals)

Vs

M/s.Hotel Chitra Pvt. Ltd.
Chintamani, Karur Bye-Pass Road
Tiruchirapalli - 620 002 .. Respondent
(in all Tax Case Appeals)

Tax Case Appeals filed u/s.260-A of the Income Tax Act, 1961, against the order of Income Tax Appellate Tribunal Chennai 'C' Bench, dated 25.02.2005 in ITA Nos.2133 to 2137/Mds/2003 for the Assessment Years 1995-96 to 1999-2000.

For Appellant : Mrs.R.Hemalatha
(in all Tax Case Appeals)

For Respondent : Mr.N.V.Balaji
(in all Tax Case Appeals)

COMMON JUDGMENT

[Judgment of the Court was made by **T.S.SIVAGNANAM*, J*]**

These appeals by the Revenue are directed against the common order passed by the Income Tax Appellate Tribunal Chennai 'C' Bench, in ITA Nos.2133 to 2137/Mds/2003 for the Assessment Years 1995-96 to 1999-2000.

2.The appeals have been admitted, vide order dated 01.09.2008, on the following Substantial Question of Law:

> *"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in annulling the assessment for the assessment year under consideration on the issue of cost of construction on the ground that the reference made to the District Valuation Officer before the examination of the accounts maintained by the assessee for cost of construction was invalid, especially in view of the clear provisions of Section 142-A introduced with retrospective effect from 15.11.1972 which does not lay down any such condition?"*

3.Heard Mrs.R.Hemalatha, leaned Senior Standing Counsel for the Revenue and Mr.N.V.Balaji, learned counsel for the respondent/ assessee.

4.The short issue which falls for consideration is as to whether the Tribunal was justified in holding that the Assessing Officer committed a serious error in making a reference to the District Valuation Officer (DVO) and placing reliance on the report submitted by him.

5.As noted above, the appeals before the Tribunal were disposed of by a common order pertaining to five assessment years. The assessment made for the year 1998-99 was under Section 143(3) of the Act and in respect of the other assessment years, it was reopened under Section 147 of the Act. The Tribunal held that reference to the District Valuation Officer was made on 23.03.1999 whereas notice under Section 143(2) was issued on 29.09.1999 and the books of accounts were produced for verification before the Assessing Officer on 07.10.1999 and therefore, the decision of the Assessing Officer to refer the matter to the District Valuation Officer was premature as he has done so without examining the books of accounts. We find that the reasoning is just and proper.

6.However, the larger issue is as to whether the Assessing Officer had jurisdiction to refer the matter to the District Valuation Officer for ascertaining the cost of construction.

7.Section 142A of the Act deals with the estimate by the Valuation Officer in certain cases. The said provision was inserted by Finance (2) Act, 2004 with retrospective effect from 15.11.1972. In the instant case, we find that the assessment, particularly for the assessment year 1998-99, which has to be taken as the lead case, was made during 2001. Thus, on the date when the assessment was made under Section 143(3) or even under Section 147 of the Act, which was in 2003, Section 142A did not find place in the Statute book. Thus, on the date when the reference was made to the District Valuation Officer, the Assessing Officer had no power to do so. Therefore, in our considered view, the contention raised by the Revenue that the action of the Assessing Officer would be saved by virtue of insertion of Section 142A of the Act with retrospective effect from 15.11.1972, would in no manner advance the case of the Revenue.

8.As noticed above, on the date when the Assessing Officer, in the instant case, made the reference to the District Valuation Officer, he had no power to do so. Hence, we are of the considered view that the order passed by the Tribunal requires no interference. Accordingly the Appeals filed by the Revenue are dismissed and the Substantial Question of Law is answered in favour of the assessee. No costs.

[T.S.S., J] **[V.B.S., J]**
22.10.2018

Index: Yes/No
Internet: Yes

msk/gsi

To

The Income Tax Appellate Tribunal Chennai 'C' Bench

T.S.SIVAGNANAM, J
AND
V.BHAVANI SUBBAROYAN, J

msk/gsi

T.C.A.Nos.1332 to 1336 of 2008

22.10.2018