IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). No.89 of 2010

Commissioner of Income Tax I,
Chennai. .. Appellant/Respondent

vs.

M/s.Keyaram Hotels Pvt. Ltd.,
2, Harrington Road, Chennai - 31. .. Respondent/Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 05.06.2009 passed in I.T.A.No.1496/Mds/2008 filed against the order dated 13.05.2008 made in I.T.A.220/07-08 of the Commissioner of Income Tax (Appeals) VII, Chennai, against the order passed by the Income Tax Officer, company circle 11(4), Chennai in assessment order dated 22.12.2006 for the assessment year 2004 - 2005 in PAN No.AABCK8077D.

For Appellant : Mr.Karthik Ranganathan,
Sr. Standing Counsel
Mr.D.Prabhu Mukunth Arunkumar
Mr.Vijay Kumar Ponna, Jr.S.C.

For Respondent : Mr.A.S.Sairaman
for Mr.S.Sridhar

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Aggrieved over the order passed by the Tribunal, by formulating the following substantial questions of law in respect of the assessment year 2004-2005, the Revenue has preferred the present appeal:

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not upholding the order of the Assessing Officer computing the income from letting of the assessee's commercial property under the head 'Income from House Property' and not allowing other expenditure which were not allowable under the head property contrary to the decision of the Madras High Court in the assessee's own case in 300 ITR 118?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the issue to the file of the Assessing Officer to examine any component in the income for providing services and maintenance for the commercial complex and allow the claim of expenses against business income if it is found that income from the property was having component for providing services and maintenance?

2.Heard the learned counsels appearing for the parties.

3.When the matter is taken up for hearing, learned counsels appearing for the parties would submit that after the remand order passed by the Tribunal, the assessing officer took the assessment for consideration and once again reiterated his earlier stand. This was confirmed by the appellate authority as well as the Tribunal. The assessee once again challenged the order of the Tribunal in T.C.A. No.815 of 2014. A Division Bench of this Court in and by the order dated 11.11.2014, answered the substantial questions of law in favour of the Revenue and thus dismissed the appeal. A special leave petition was filed as against the order of the Division Bench, which was also dismissed as reported in (2015) 63 taxmann.com 301 (SC).

4.Thus, in view of the same, nothing survives for adjudication as, as on today, the decision of the Division Bench dated 11.11.2014, as confirmed by the Apex Court, stands. However, learned counsel for the assessee would submit that the review petition has been filed as against the order of the Division Bench referred supra since two of the subsequent decisions have been taken note of notwithstanding the fact that the earlier order deals with the very same case of the assessee pertaining to the same assessment year.

5.We are of the view that the same cannot be a ground to allow this appeal. As stated earlier, as on today, the order of the Division Bench, as confirmed by the Apex Court would stand. However, this order will not stand in the way of the assessee to seek an adjudication on merits in the pending review petition.

In the event of the review petition allowed in favour of the assessee, the consequence would follow for the assessment year 2004-2005 also and in such an eventuality, our order will not stand in the way.

6.With the above observation, the Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. THE INCOME TAX APPELLATE TRIBUNAL,
"D" BENCH, CHENNAI.

2. THE COMMISSIONER OF INCOME TAX I, CHENNAI.

3. THE COMMISSIONER OF INCOME TAX (APPEALS) VIII,CHENNAI,
121, MAHATMA GANDHI SALAI.

4. THE INCOME TAX OFFICER,
COMPANY CIRCLE II (4),
BESANT NAGAR, CHENNAI.

5. THE ASSISTANT MAGISTRATE,
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN, 3RD FLOOR,
BESANT NAGAR, CHENNAI 90.

T.C.(A).No.89 of 2010

GJ II(CO)
TR(04/07/2018)