

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.72 OF 2018

The Principal Commissioner of
Income Tax, Panaji. Appellant.

Versus

Goa Tourism Development Ltd. Respondent.

Ms. Susan Linhares, Standing Counsel for the Appellant.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 7 January 2019.

P.C.:

Heard Ms. Susan Linhares for the Appellant.

2. The challenge in this Appeal is to the order dated 13 April 2018 made by the Income Tax Appellate Tribunal, (ITAT) Panaji, dismissing the appeal filed by the Appellant-Revenue against the Order dated 30 May 2017, made by the Commissioner of Income Tax (CIT) (Appeals) relevant to the Assessment Year 2008-09. The CIT Appeals, as well as the ITAT, have concurrently held that the expenditures towards repairs and renovations of the Respondent-Assessee's hotel properties must be treated as a revenue expenditure and not as a capital expenditure.

3. Ms. Linhares submits that in the present case, the Respondent-Assessee has brought into existence a new asset or in any case, has secured new advantage of a enduring nature. She submits that in such circumstances, the expenditure incurred on repairs and maintenance which, ultimately, resulted in renewal and upgradation of hotels was required to be treated as a capital expenditure and not revenue expenditure. She submits that this is the ratio of the Apex Court decision in *Ballimal Naval Kishore vs. Commissioner of Income Tax*¹. She submits that, therefore, the substantial questions of law, as framed, arise in the present appeal which are required to be considered.

4. Ms. Linhares also submits that the ITAT clearly erred in allowing depreciation on UPS purchases at the rate of 60 %, instead of 15 % allotted by the Assessing Officer. She, therefore, submits that the substantial question of law as formulated in paragraph 8(4) of the Memo of Appeal also arises and is required to be considered.

5. We have considered the aforesaid submissions of Ms. Linhares. We have also perused the impugned orders, as well as the material on record. Taking into consideration the material on record, concurrent findings recorded by the two Authorities, as well as the

1 (1997) 224 ITR 414

settled legal position, we are of the opinion that no substantial questions of law arise in this Appeal. Therefore, this Appeal is not required to be entertained for the reasons set out here after.

6. In the present case, the CIT Appeals, and the ITAT have examined the factual aspects of the matter in some details. The expenditure, in the present case, was towards dismantling Mangalore tiles, and laying laterite stones, laying plaster, plaster of paris and painting, waterproofing, replacement of tiles and plumbing. There is no infirmity in the view taken by the two Authorities that such expenditure be treated as revenue expenditure.

7. In the present case, taking into consideration the nature of the repairs and renovations, it can hardly be said that the Respondent-Assessee has gained some substantial advantage of enduring nature. In any case, as held by the Hon'ble Apex Court in *Empire Jute Co. Ltd. vs. CIT*² that every advantage of enduring nature acquired by an assessee cannot be routinely treated as a capital expenditure. In such a case, it is necessary to consider the nature of the advantage in the commercial sense and it was only where the advantage was in the capital field that the expenditure would be disallowable on the ground that it was capital, but if the advantage consists in merely facilitating the assessee's trading operations or

2 (1980) 124 ITR 1,

enabling the management and conduct of the assessee's business leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.

8. In the particular context of repairs and renovations to hotel properties, reference can usefully be made to a decision of Madras High Court in *Commissioner of Income-Tax vs. Ooty Dasaprakash*³. In this case, the assessee was running a hotel and had incurred substantial expenditure, spread over three years on repairs and on modernising the hotel and replacing the existing components of the building, furniture and fittings with a view to create a conducive and beautiful atmosphere for the purpose of running the business of the hotel. This expenditure was held as revenue expenditure since it was considered to be not of enduring benefit to the assessee. Similarly, in *Commissioner of Income-Tax vs. Lake Palace Hotels and Motels P. Ltd.*⁴ the Rajasthan High Court held that the expenditure on renovation of the hotel to meet the requirement of the Commonwealth Foreign Ministers' Conference was not of any enduring benefit and, therefore, deductible as revenue expenditure.

9. In the *CIT vs. Cama Hotels Ltd.*⁵ the Karnataka High

³ 237 ITR 902

⁴ 258 ITR 562

⁵ (2015) 63 Taxmann.com 27

Court has held that merely because the income of the hotel may have increased on account of repairs, renovation and modification, it does not necessarily follow that the repairs and renovation amount to replacing the existing assets with new capital assets. The existing asset is the hotel and merely because the same can be used in a better manner or more profitably on account of repairs and renovation, it cannot be said that the expenditure incurred towards such repairs or renovation was capital expenditure and not the revenue expenditure.

10. The decision in *Ballimal Naval Kishore* (supra), is distinguishable in the context of the facts in the present case. In *Ballimal Naval Kishore* (supra), the Hon'ble Apex Court approved the ruling in *New Shorrock Spinning and Manufacturing Co. Ltd. Vs. Commissioner of Income Tax*, (1956) 30 ITR 338 in which this Court had held that if the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then, obviously, such an expenditure would not be an expenditure of a revenue nature, but would be a capital expenditure.

11. The aforesaid decision is not applicable to the facts of the present case because, here it cannot be said that the expenditure incurred was for the purpose of bringing into existence a new asset or obtaining a new advantage. This was a simple case where the existing assets were repaired, or to some extent renovated. The CIT

Appeals, as well as the ITAT, on facts, have held that this was not a case where some new asset was brought into existence or new advantage of enduring nature was obtained. Such concurrent findings of fact do not suffer from any perversity, so as to give rise to any substantial question of law.

12. In so far as the second issue is concerned, both, the CIT Appeals, as well as the ITAT have relied upon the decisions in the case of *CIT vs. BSES Yamuna Powers Ltd.*⁶ *Pentair Water India (P) Ltd. vs. ACIT*⁷ and *Macawber Engineering System (I) P. Ltd. vs. ACIT*⁸ in which it is clearly held that the UPS is the component/equipment connected with the computers and is, therefore, entitled for the depreciation @ 60%. Again, the contention, as raised, does not give rise to any substantial question of law.

13. For the aforesaid reasons, this Appeal which gives rise to no substantial questions of law, is required to be dismissed and is, hereby, dismissed. There shall be, however, no order as to costs.

(Prithviraj K. Chavan, J.)

(M.S. Sonak, J.)

⁶ (2010) 8 TMI 58

⁷ (2014) 5 TMI 1068

⁸ (2012) 19 ITR (Trib) 302