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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1097 OF 2017

Pr. Commissioner of Income Tax-10 … Appellant

V/s.

M/s. Hotel Leela Venture Ltd. ... Respondent.

Mr. Akhileshwar Sharma for the Appellant.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 5 NOVEMBER 2019.

P.C. :-

This Appeal filed under Section 260A of the Income Tax Act, 1961 (the Act) challenges the judgment and order dated 24 August 2016 passed by the Income Tax Appellate Tribunal, Mumbai in ITA No. 6170/Mum/2014. The relevant Assessment Year is 2009-10.

2. The Respondent – Assessee is a company engaged in business of five star deluxe hotels. For the relevant assessment year, the Respondent – Assessee filed a return of income declaring total

income of Rs.43,17,69,664/-. The return was subjected to scrutiny assessment and the total income was assessed at Rs.62,66,74,561/-. The Assessing Officer made an addition of Rs.10,47,08,044/- to the book profit on account of foreign currency transaction difference. The Assessing Officer added the amount treated it as contingent in nature. The Assessing Officer passed an order under Section 154 of the Act on 3 October 2013 computing the total income at Rs.62,75,74,561/-. The Respondent – Assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) partly allowed the appeal of the Respondent deleting the addition on the ground that the liability was not a contingent liability. The Appellant – Revenue filed an appeal before the Income Tax Appellate Tribunal. By the impugned order the appeal filed by the Appellant – Revenue was dismissed.

3. We have heard Mr. Sharma, learned Counsel for the Appellant.

4. The Appeal is seeking to raise the following question as a substantial question of law :-

> *" Whether on the facts and in the circumstances in the case and in Law, the Hon'ble ITAT errerd in upholding the claim of the assessee that the amortized amount of exchange difference arising out of foreign currency borrowings are not contingent liability and should not form part of computation of Book Profit for*

> *the purpose of 115JB of the Income Tax Act, 1961 without appreciating that loss on account of foreign exchange fluctuation is contingent in nature and hence cannot be taken into account while computing book profit as per companies Act ?"*

5. Mr. Sharma, learned Counsel for the Appellant reiterated the contentions raised before the Tribunal. The Tribunal has approved the decision of the Commissioner (Appeals), which is a detailed one. The Tribunal and the Commissioner (Appeals) held that the forward foreign exchange contract entered into by the assessee to buy or sell foreign currency at an agreed price at a a future date cannot be considered as a contingent in nature as it creates a continuing binding obligation on the date of the contract against the assessee. We find no error in the view taken by the Tribunal that in the present case where an obligation was undertaken to meet a liability and only consequential effect was to be determined, it could not be said that the amount in question was in a nature of contingent liability. Nothing is shown to us how the view taken is erroneous in law or on facts.

6. During the course of the argument, Mr. Sharma sought to urge an additional question of law to the effect that the Tribunal erred in not treating Rs.10,47,08,044/- as capital expenditure for computation of book profit under Section 115JB of the Act when

this amount was treated by the Assessing Officer and accepted by Assessee as a capital expenditure. Not only this point was not urged before the Tribunal but it does not even find reference in the present appeal memo. The appeal was filed before the Tribunal on a sole ground of the amount in question being a contingent liability. In view of such single focused ground before the Tribunal, the decision of the Tribunal was restricted only on that ground. The argument of Mr.Sharma that there was only a mistake in choosing the words wherein instead of the words - capital expenditure, the words - contingent liability were used, cannot be accepted, as why the amount was to be treated as contingent in nature was also specified in the said ground stating that the loss was on account of foreign exchange fluctuation. It is not permissible for the Appellant to urge said question for the first time in this Court, that too during the course of the oral argument.

7. The question as proposed does not give rise to any substantial question of law. The Appeal is dismissed.

NITIN JAMDAR, J. **M.S. SANKLECHA, J.**