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

INCOME TAX APPEAL (IT) NO.1841 OF 2017

Pr.Commissioner of Income Tax-3 … Appellant
V/s.
V.Hotels Limited (Formerly Tulip Hospitality Services Limited) … Respondent

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Mr.A.R.Malhotra with Mr.N.A.Kazi, Advocates for the Appellant.
Mr.Percy J. Pardiwalla, Senior Advocate with Mr.Atul K. Jasani, Advocates for the Respondent.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : SEPTEMBER 21, 2020

P.C.:-

1. Heard Mr.Malhotra, learned standing counsel, revenue and Mr.Pardiwalla, learned senior counsel alongwith Mr.Atul Jasani, learned counsel for the respondent/assessee.

2. This appeal has been filed by the revenue under section 260A of the Income Tax Act, 1961 (briefly”the Act” hereinafter) against the order dated 26th August, 2016 passed by the Income Tax Appellate Tribunal, Mumbai Bench “F”, Mumbai (referred to as “the Tribunal” hereinafter) in ITA No. 3191/Mum/2011 and ITA No.4215/Mum/2011, for the assessment year 2007-2008.

3. ITA No.3191/Mum/2011 was filed by the assessee whereas ITA No.4215/Mum/2011 was filed by the revenue.

4. The two appeals were heard by the Tribunal alongwith a number of appeals filed by the same parties for the assessment years 2005-2006, 2006-2007 and 2008-2009.

5. As already noted above, the present appeal relates to the assessment year 2007-2008.

6. The appeal has been preferred on the following two questions stated to be substantial questions of law:-

> “1. Whether on the facts and in the circumstances of the case and in law, Tribunal is justified in allowing depreciation of Rs.27,60,587.00 on Floor Space Index (FSI) @ 10% of total consideration, without appreciating that grant of additional FSI is not in the nature of any kind of assets until and unless the additional flooring/building is constructed, therefore, not eligible for depreciation in this case?
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> 2. Whether on the facts and in the circumstances of the case and in law, Tribunal is justified in allowing depreciation amounting to Rs.3,66,06,538.00 on intangible assets as claimed by the assessee?”

7. During the hearing on February 12, 2020, there was consensus at the Bar that in so far question No.2 is concerned, the same has already been answered by this Court in the case of the assessee itself in Income Tax Appeal Nos.835 and 836 of 2016, decided on 17th December, 2018, the only difference being that at that stage the assessee was known as Tulip Hospitality Services Limited. It has been held that it

is not a substantial question of law. Thereafter, learned counsel for the parties were heard on question No.1.

8. In so far question No.1 is concerned, this issue has been decided by us in the connected appeal i.e. Income Tax Appeal No.1734 of 2017 arising out of the same common order of the Tribunal for the assessment year 2006-2007. It has been held that no substantial question of law arises on this issue from the order of the Tribunal. Following the said order we dismiss the present appeal of the revenue by holding that no substantial question of law arises from the order of the Tribunal.

9. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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