IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

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THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal Nos.1918 and 1920 of 2008

M/s.Oriental Hotels Ltd.,
17, M.G. Road,
Chennai – 600 034. ... Appellant in both appeals

Vs.

The Joint Commissioner of Income Tax,
Special Range – VIII,
Chennai. ... Respondent in both appeals

Tax Case Appeals in T.C.A. Nos.1918 and 1920 of 2008 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 30.06.2005 passed in I.T.A.Nos.1961/Mds/2002 and 1863/Mds/2002 respectively.

For Appellant : Mr.Venkata Narayanan for M/s.Subbaraya Aiyar in both appeals

For Respondent : Mr.T.Ravikumar Senior Standing Counsel in both appeals

COMMON JUDGMENT

(Delivered by M. DURAISWAMY, J)

These appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 30.06.2005 passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.Nos.1961/Mds/2002 and 1863/Mds/2002 for the Assessment Years 1996-1997 and 1995-1996 respectively. The above appeals have been admitted on 27.01.2009 on the following Substantial Questions of Law:

> "1.Whether on the facts and in the circumstances of the case the Tribunal was right in confirming the reopening of the assessment made on the basis of mere change of opinion?
>
> 2.Whether on the facts and in the circumstances of the case, the tribunal was right in not appreciating that the appellant has fully and truly disclosed all particulars and materials and as such the reopening of the assessment could not be made beyond the period of four years as per proviso to Section 147?
>
> 3.Whether on the facts and in the circumstances of the case, the tribunal was right in holding that interest income earned on deposits, loans advanced to subsidiary companies and inter

corporate dividends which were in the course of and for the purpose of business should be assessed as income from 'other sources' and not under the head profits and gains of the business?

4.Whether on the facts and in the circumstances of the case, the tribunal was right in holding that 15% of foreign currency converted into Indian rupees by foreign tourists for settling the bills are not relatable to service rendered by the appellant and hence should be excluded from the export turnover for the purpose of computing relief u/s 70 HHD?

5.Whether on the facts and in the circumstances of the case, the tribunal was right in holding that the Appellant is not entitled to deduction u/s 80 O as the service rendered by it to a foreign hotel cannot be construed as "professional services" or technical services" ?

6.Whether on the facts and in the circumstances of the case, the tribunal having held that the appellant is not entitled to deduction under Section 80 O, it ought to have directed appropriate deduction under Section 80 HHD on the income earned from abroad in foreign exchange?"

2. We have heard Mr.Venkata Narayanan for M/s.Subbaraya Aiyar, learned counsel for the appellant/ assessee and Mr.T.Ravikumar, learned Senior Standing Counsel for the respondent/Revenue.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the **Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020)** to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Forms 1 & 2 on 28.12.2020 under Section 4 of the Act.

5. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping these appeals pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the

assessee. Accordingly, the Tax Case Appeals stand disposed of on the ground that the assessee has already filed the requisite Forms 1 & 2 and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore these appeals in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of these appeals and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

6. With this observation, these Tax Case Appeals stand disposed of with the aforementioned liberty and consequently, the Substantial Questions of Law are left open. No costs.

[M.D., J.]　　[T.V.T.S., J.]
17.02.2021
(4/7)

Index　　: Yes/No
Internet　: Yes

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To

1.The Income Tax Appellate Tribunal, Madras “B” Bench

2.The Joint Commissioner of Income Tax,
Special Range – VIII,
Chennai.

M. DURAISWAMY, J.
and
T.V. THAMILSELVI, J.

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Tax Case Appeal
Nos.1918 and 1920 of 2008

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(4/7)