IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

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

Tax Case Appeal No.79 of 2010

M/s.Oriental Hotels Limited,
37, M.G. Road, Nungambakkam,
Chennai - 600 034. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle-V,
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 09.04.2009 passed in I.T.A.No.980/Mds/2006, against the order of the Commissioner of Income Tax(Appeals)-VI, 121, Mahathma Gandhi Road, Chennai-600 034, dated 10/03/2006, ITA.No.232/04-05, for the Assessment year 2001-02 and against the Additional Commissioner of Income Tax Company Range-V, Chennai-34 dated 30/03/2004 PAN/GIR No.AAOCO0728N for the Assessment year 2001-02.

For Appellant : Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

J U D G M E N T
(Delivered by M. DURAISWAMY, J)

The appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order, dated 09.04.2009, passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.980/Mds/2006 for the Assessment Year 2001-02. The above appeal was admitted on 09.02.2010 on the following reframed Substantial Questions of Law:

"1.Whether the Appellate Tribunal was right in holding that the appellant is not entitled to deduction under Section 35-D as hotel industry cannot be regarded as an industrial undertaking?

2.Whether the Appellate Tribunal was right in law in denying deduction under Section 35-D when the same has been allowed in the initial assessment year 1995-96?

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 he amount received from British Airlines towards settlement of the bills of stay of their crew should not be included in the foreign exchange receipts of the appellant for the purpose of computation of deduction u/s.80HHD?"

2. We have heard Mr.R.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 the appeal 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 Appeal stands 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 the appeal 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 the appeal 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, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal, Madras "B" Bench

2.The Assistant Commissioner of Income Tax,
Company Circle-V,
Chennai.

3.The Commissioner of Income Tax(Appeals)-VI,
121, Mahatma Gandhi Road, Chennai-600 034.

4.The Additional Commissioner of Income Tax,
Company Range-V, Chennai-34.

+1cc to M/s.Subbaraya Aiyar, Advocate SR.1267
+1cc to Mr.T.Ravi Kumar, Advocate SR.1260

Tax Case Appeal No.79 of 2010

AD(CO)
CB(17/03/2021)