IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM

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

Tax Case Appeal No.238 of 2011

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

Vs.

The Assistant Commissioner of Income Tax,
Company Circle - V(1),
Chennai. ... Respondent/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 21.01.2011 passed in I.T.A.No.2314/Mds/2007 and this appeal preferred against the order of the Commissioner of Income Tax (Appeals) V, Chennai 34 order dated 31.07.2007 made in ITA.No. 89/2006-2007 for the Assessment Year 2003-2004 and preferred against the order of the Assistant Commissioner of Income Tax, Company Circle - V (1), Chennai order dated 29.03.2006 made in PAN/GIR.No.AAACO 0728N/51001-0 for the Assessment Year 2003-2004.

For Appellant : Mr.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.)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 21.01.2011 passed by the Income Tax

Appellate Tribunal, Madras "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.2314/Mds/2007 for the assessment year 2003-2004. The above appeal has been admitted on 01.08.2011 on the following Substantial Questions of Law:

> "1.Whether the Appellate Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 35D as hotel industry cannot be regarded as an industrial undertaking without appreciating that hotel falls within the definition of "industry"?
>
> 2.Whether the Appellate Tribunal was right in law in denying deduction under Section 35D 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 law in holding that interest income earned on deposits, loans advanced to subsidiary companies and inter corporate dividends 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 and thereby excluded from the profits of the business for the purpose of computing deduction under Section 80HHD?
>
> 4.Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the 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 under Section 80HHD of the Income Tax Act?"

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 had already been issued with Form - 3

on 27.01.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

5. In view of the submission made by the learned counsel for the appellant, the Tax Case Appeal stands dismissed as withdrawn. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Assistant Commissioner of Income Tax,
Company Circle - V(1),
Chennai.

3.The Commissioner of Income Tax (Appeals) V,
Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 9620
+1cc to Mr.T.Ravikumar, Advocate, S.R.No. 9683

Tax Case Appeal No.238 of 2011

KJ(CO)
GN(15/03/2021)