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.239 of 2011

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

Vs.

The Deputy Commissioner of Income Tax,
Company Circle - V(1),
Chennai. ... Respondent/Appellant

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.1974/Mds/2008 and this appeal preferred against the order of the Commissioner of Income Tax (Appeals) V, Chennai 34, dated 22.02.2008 made in ITA.No. 658/06-07 for the Assessment Year 2004 -2005 and against the order of the Deputy Commissioner of Income Tax, Company Circle V (1), Chennai dated 26.01.2006 made in PAN.No. AAACO 0728N/51001-0 for the Assessment Year 2004-2005.

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, Chennai ('the Tribunal' for brevity) in I.T.A.No.1974/Mds/2008 for the Assessment Year

2004-2005. 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 expenditure incurred towards architect fees and soil testing charges in respect of new hotel project which was later abandoned is capital in nature?
>
> 2. Whether the decision of the jurisdictional High Court in the case of EID Party (India) Ltd. Vs. CIT reported in 257 ITR 253 dealing with disallowance of expenditure incurred toward a new business for manufacture of new product which was abandoned would apply to the present case where the expenditure was incurred towards a new project in the same line of business?"

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 30.12.2020 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 this 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 this 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. Income Tax Appellate Tribunal,
   Madras "B" Bench

2.The Commissioner of Income Tax,
  (Appeals) V, Chennai 34.

3. The Deputy Commissioner of Income Tax,
   Company Circle - V(1),
   Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 9621
+1cc to Mr.T.Ravikumar, Seniour Counsel, S.R.No. 9747

Tax Case Appeal No.239 of 2011

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