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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 293/2023**

**THE PR. COMMISSIONER OF INCOME  
TAX-15**

.....Appellant

Through: Mr. Aseem Chawla, SSC with  
Ms. Pratishtha Chaudhary &  
Ms. Naincy Jain, Advs.

versus

**SACHDEVA HOSPITALITY**

.....Respondent

Through: Dr. Rakesh Gupta, Mr. Somil  
Agarwal & Mr. Dushyant  
Agarwal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

% **23.07.2024**

**CM APPL. 27007/2023 (300 Days Delay in Refiling)**

Bearing in mind the disclosures made, the delay of 300 days in re-filing the appeal is condoned.

Application stands disposed of.

**ITA 293/2023**

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 21 February 2020 and which has affirmed the view expressed by the Commissioner of Income Tax (Appeals) [“**CIT(A)**”] holding that the income of the assessee was liable to be treated as business income.

2. In this appeal the following questions of law are posited for our consideration:

“2.1 Whether the Id. ITAT is correct in deleting the disallowance of claim of deduction under section 80ID of the Income Tax Act,



1961?

2.2 Whether the Id. ITAT is correct in not deciding one of the grounds of appeal 'on the facts and circumstances of the case & in law, the Id. CIT(A) is not justified in directing the Assessing officer to assess under the head 'Income from business and profession' instead of 'Income From House Property' by ignoring the definition of 'business' provides in section 2(13) of the Act without considering the one of the agreement conditions whereby minimum guarantee fees would be received by the Assessee"?

2.3 Whether the Id. ITAT is correct in arriving at the conclusion that the Assessee is entitled for deduction under section 80ID of the Income Tax Act, 1961, relying on the Judgements in the case of Jai Mahal Hotel (P) Ltd Vs ACIT 65 ITD 362 (Delhi) wherein the question of allowing or otherwise of deduction under section under section 80ID was neither addressed nor answered?

2.4 Whether the Id. ITAT is correct to apply the Judgement in the case of Jai Mahal P. Ltd. (Supra) wherein the issue decided is only whether the income shall be assessed under the head 'Income From Business' or 'Income from other sources', whereas the income assessed by the A.O. is under the head 'Income from House Property'?"

3. However, and on facts which could not be disputed or challenged before us, we find that the Tribunal has held as follows:

**“9.** On the other hand, the Id. AR argued that what PHPL providing is primarily in the nature of consultancy and professional services and it cannot be deemed that the entire operations have been relegated to PHPL. It was argued that all the receipts of the hotel from guests are credited to the bank account of the assessee, the cheques, credit cards and other receipts. All expenses are paid from the bank account in the name of the assessee. All sale invoices also reflect the name of the assessee. He relied on the Article 12 of the agreement which state that during the term of the agreement the hotel shall ....be known and designated as Peppermint Hotel, Gurgaon or such name selected by the owner from time to time... It was argued that the service tax registration, VAT registration, Labour department registration, PF registration and ESIC registration are all in the name of the assessee. The VAT returns, the luxury tax return, service tax return have been filed in the name of the assessee.

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**11.** In addition to the facts narrated above, we also find that the liquor license issued by the Collector-cum-Excise &Taxation



Commissioner is in the name of the assessee and so as the NOC for bar license, sanitary certificate and public performance license. The copy of the bank statement reflects the receipts and payments out of the assessee account. The labour department registration is in the name of the assessee and all the employees are on the role of the assessee firm and PF liable to is also tagged to the assessee being the employee. All the TDS certificates received in the name of the assessee firm wherever applicable. We have also given our attention to the judgment of Co-ordinate Bench in the case of *Jai Mahal Hotel Pvt. Ltd.* 65 ITD 362 (Del.).”

4. As is manifest from the aforesaid, the agreement of the assessee with M/s Peppermint Hotels India (P) Ltd. [**“PHPL”**] clearly could not have been viewed as one relating to “letting of property”. The agreement essentially appears to have rested on the need to obtain consultancy and professional services in connection with the running of the hotel.

5. The Tribunal has found that the receipts from hotel guests were credited to the bank account of the assessee as were the revenues obtained from cheques and the use of credit cards in the premises. All expenses are stated to have been met from the bank account maintained by the respondent-assessee. Even the sale invoices were made out in the name of the respondents. The Tribunal has also on the basis of the material existing on the record taken note of the Service Tax, VAT, Labour Department, PF and ESIC registrations, all of which stood in the name of the assessee, apart from the VAT on the luxury tax and Service Tax Returns which had been filed.

6. It was in the aforesaid context that it had chosen to follow the decision rendered by its Co-ordinate Bench in **Jai Mahal Hotel Pvt. Ltd.** [65 ITD 362 (Del)]. In *Jai Mahal*, while dealing with a similar agreement, the Tribunal had observed as follows:

“16. A careful scrutiny of various clauses of the said agreement executed between the appellant-company and IHC reveals that the



said agreement was executed with the predominant motive of exploiting the hotel building and its fixtures in a more profitable, organised and a systematic manner. It is well-known that IHC is a company owning all the Taj groups of hotels and they have a long experience and expertise in carrying on the business of hotels. They are fully conversant with the modern technology and specialised skill required for running and managing five star hotels. The agreement in question was made effective from June, 1984. The period of this agreement was 60 years commencing from the appointed date which was 2-6-1984. For the first 5 years the appellant-company was entitled to minimum guaranteed business profits of Rs. 35 lakhs i.e. Rs. 7 lakhs per annum. Thereafter the minimum guaranteed business profits was agreed to be increased periodically from Rs. 10 lakhs per annum to Rs. 55 lakhs per annum as stipulated in clause 3.4 of the said agreement. The assessee was entitled to 1 per cent share in the gross operating profits or the aforesaid minimum guaranteed business profits whichever is higher as per the aforesaid clause. It is evident from the aforesaid clause that the appellant-company while ensuring minimum guaranteed business profits had also retained the right to receive 1 per cent share in the gross operating profit, if it is more than the minimum guaranteed business profit. The termination clauses authorises the appellant-company to terminate this agreement by giving 30 days notice of termination in a situation prescribed under clause 14.1. The said agreement also provides that on the expiry of this agreement by efflux of time, the entire property including the immovable assets, fixed assets including electrical wiring, water services, sanitary fittings, all fittings attached to the building etc. introduced by the IHC will revert back to JMHL automatically without payment of any compensation whatsoever to IHC. These clauses indicate that the appellant company entered into a long-term business agreement with IHC to ensure that their hotel is managed and run in a profitable manner by a company which possesses rich experience in this line and which has an established name in the field of running five star hotel in the country. The company also ensured minimum guaranteed business profits as a result of exploitation of their commercial assets by entering into such an agreement with IHC. The said agreement also clearly reveals that the company did not give up its intention to carry on the hotel business at its own. In the event of failure on the part of IHC to act in accordance with the terms of the agreement, the appellant-company had the liberty to terminate the said agreement by giving 30 days notice and in that event the entire assets brought into existence by IHC by way of fittings in the said hotel building will revert back to the appellant-company. This clearly shows that the appellant-company had all intentions to run the hotel at its own in the event of termination of the said agreement for any reason whatsoever.



**17.** The Memorandum of Association of the company also permit exploitation of commercial assets belonging to the assessee in such a manner. A reference of various clauses of Memorandum of Association has already been given in earlier parts of this order which shows that the company was entitled to carry on the business of running a hotel in any manner including by entering into any kind of arrangement or agreement with any other firm or company engaged in this line of business.

**18.** It is evident from the aforesaid discussions that in the instant case, the intention of the assessee was never to go out of hotel business but the company had all the intentions to very much continue the business. The intention of entering into the contract with IHC was that the offer given by IHC was found to be more lucrative and profitable. The company has a prudent businessman thought that by entering into such an agreement with IHC for a long term, it will ensure minimum guaranteed business profits as well as it will be entitled to retain 1 per cent share in the operating gross profit, whichever is higher. The past experience of running a hotel by the erstwhile firm was not a happy experience. The firm incurred loss by running the hotel in those very premises. The company by entering into the said agreement not only obviated the possibility sustaining loss in the future but it ensured the minimum guaranteed business profit for the entire duration of the said agreement. Apart from this the IHC had undertaken to make various improvements, add furniture and fixtures, incur substantial expenditure for beautifying the hotel keeping in view the need of the tourists. All such fittings and fixtures made in the hotel building will revert back to the appellant-company at the time of termination of the contract. This aspect was also one of the considerations on account of which a long-term licence was granted to IHC. Such clauses in the aforesaid agreement and the material brought on record clearly show that the assessee never abandoned the whole idea of conducting the hotel business on its own. On the other hand, the termination clause clearly indicate that in case IHC does not implement the various terms of the agreement, the appellant-company will be entitled to terminate the said agreement and will be able to run the hotel at its own.

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**23.** It is an undisputed fact that the hotel belonged to the assessee is located at Jaipur (Rajasthan). A perusal of the asst. order made in the case of the assessee for all the years under consideration also reveals that a major part of the assessee's income consisted of licence-fee received from IHC. The other income consists of interest income from banks etc. Thus there is no other business activity of the company except in the State of Rajasthan. Merely because the company is assessed to tax at Delhi, it cannot be held



entitled to a benefit, which is denied to other hotels located in the State of Rajasthan in view of the judgment of the Hon'ble Rajasthan High Court. We are, therefore, of the opinion that the judgment of the Hon'ble Rajasthan High Court in the case of *Lake Palace Hotels & Motels (P) Ltd.*'s case (supra), should be applied in the present case also.

**24.** The Hon'ble Rajasthan High Court in the aforesaid judgment has held as under :

"4.1 Hotel business is a business in which the building is one of the components besides the other facilities like food, air-conditioning, etc. The building itself is of different uses like rooms for stay, conference hall, kitchen, etc. The hotels are also of different categories. The facility in the hotels differs according to the star mark given to them. The facility of comfortable stay is also provided by guest houses, house hotels, inn, Sarai, etc. The building which is used in the business of hotel remains a building in spite of the fact that it is decorated by plaster of paris, timber work, etc. The skeleton of building without decoration if it is building then the items by which it is decorated would not change the character of building. The item may however be considered as plant subject to their use. The use of the building is as a setting. Building is not used as a tool of the trade. Different rates of depreciation for building have been provided which also makes the legislative instant clear what the different type of buildings remains as building. The amendment of s. 31(1)(v) has only clarified the legislative intent that the building of hotel is a building, though by amendment higher rate of depreciation is provided to it. In an industry no production can be normally carried on without a building where the plant and machineries are installed but for that reason the building cannot be considered plant when there is separate entry of building for purposes of depreciation. Building may accommodate plant and machinery or living persons. It remains a building. The structure having roof and durability is considered as buildings. Every movable and immovable property has its categorisation. It is basically the hospitality which is provided in a hotel may be by human service or by equipment, surroundings, atmosphere, etc. which is provided by decorated rooms beautiful furnishing. The recompense of the hotelier is for the care, pain, facility which is provided by him by way of service rendered and not by providing the room alone it could be considered as a tool of the trade. The hotel industry is a service oriented industry and better the service higher the charges, the element of service is the dominant object, and not providing the room alone. The room rent in a city like Jaipur differs from hotel to



hotel. The ordinary rooms may be available at Rs. 100 per day where the suit in five star hotel may be as costly as Rs. 10,000 per day. If the building of five star hotel is a plant there is no reason why the building of an ordinary hotel should be treated differently only on account of the charges on extra facilities. The difference of charges are because of extra services, facilities etc. provided and the role of the building in two type of hotels remains same, and same time even the better services are provided in number of guest houses. Looking to the common parlance meaning and the specific use of the word 'building' in s. 32 of IT Act, we are of the view that the building of hotel is a 'building'."

7. Bearing in mind the position on facts which obtained, we find ourselves unable to discern any error that may said to have been committed by the Tribunal in recognizing the income in question to be business income.

8. The appeal, consequently, fails and shall stand dismissed.

**YASHWANT VARMA, J**

**RAVINDER DUDEJA, J**

**JULY 23, 2024/kk**