2026:MHC:4526

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE S.KARTHIKEYAN

TCA No. 649 of 2011

CNR: {HCMA010377522011}

Case QR

Commissioner Of Income Tax-I
Chennai

..Appellant(s)

Vs

M/s Essor Hotels Pvt. Ltd
No.84 Flat No.1 Radha Vihar,
MC Nicholas Road, Chetpet.
Chennai-603 031

..Respondent(s)

APPEAL filed under Section 260A of the Income Tax Act, 1961 against order dated 20.07.2011 passed in ITA No.463/Mds/2010 on the file of the Income Tax Appellate Tribunal Madras 'C'Bench, Chennai for the assessment year 2005-06.

For Appellant(s): Mr.T.Ravikumar
Senior Standing Counsel

For Respondent(s): Mr.M.A.Mudimaman

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JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

This is a Departmental appeal challenging order dated 20.07.2011 passed by the Income Tax Appellate Tribunal (in short 'ITAT'/'Tribunal'). The question that has been admitted on 07.02.2012 is as follows:

> *'Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax u/s. 263 on the ground that the order was not erroneous since the Assessing Officer had taken only one of the possible views, ignoring the fact that the assessee itself had declared income under the head "Short Term Capital Gains" in respect of sale of building and fixtures and the sale deed also clearly showed that the property consisted of land with building with fittings and fixtures and therefore there was omission on the part of the Assessing Officer to consider the short term capital gains in respect of those assets other than the land?'*

2. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Department and Mr.A.Mudimannan, learned counsel for the respondent/assessee.

3. Mr.Ravikumar circulates a copy of order dated 20.11.2024 passed in T.C.(A) Nos.345 and 346 of 2011 dismissing appeals that had been instituted by the Department challenging order of the Tribunal relating to the same assessment year as before us, i.e., 2005-06. Those proceedings had emanated from original assessment proceedings, dated 27.12.2007 i.e., order of assessment under Section 143(3) of the Income Tax Act, 1961 (in short 'Act').

4. On a perusal of the above order, we are left with no doubt that the issue of capital gains arising from sale of the property at Door No.1089, Poonamallee

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High Road admeasuring 27 grounds and 850 sq.ft. had not escaped the attention of the Assessing Officer as that issue form part and parcel of the assessment proceedings.

5. The argument taken by the asessee which found favour with the Tribunal was that the twin conditions for attracting Section 263 of the Act had not been established in this case. Section 263 requires concurrent satisfaction of the conditions of error and prejudice to the interest of the revenue.

6. Since in this case the Assessing Authority had noted the requisite documents including sale agreement dated 22.11.2004, no error has transpired on this account, and it is based on the aforesaid factual and legal position, that the Tribunal had taken a view that the twin conditions had not been satisfied in this case.

7. The Commissioner of Income Tax, in the revisional order, has merely substituted the view of the Assessing Officer, a plausible view, with his own view, which is impermissible under Section 263 of the Act. The conclusion of the Tribunal is extracted below:

> *4. After considering the rival submissions, we are of the considered opinion that this is not a case in which assessment order can be revised. The assessment order/any order can be revised only if the twin conditions namely, (i) the order is erroneous and (ii) it is also prejudicial to the interests of the Revenue, co-exist. The Assessing Officer has applied his mind to the issue in question, by expressing his view in so many words. He has observed that the assessee had clearly disclosed the receipt towards the sale of land and building but after considering the*

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DR.ANITA SUMANTH, J.
AND
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fact that building was demolished before this sale, the Assessing Officer has taken a view which is one of the possible views and this view has been further confirmed by the Tribunal, so, we cannot say that there is any error in the assessment order. The Tribunal has finally settled this issue which cannot be disturbed by us even. Therefore, twin conditions requisite u/s 263 which are the sine' qua non for revising an order are found to be extinct in this case. Hence, the assessment in question cannot be revised. Accordingly, we set aside the order of the ld. CIT and restore the assessment order.

8. In light of the above discussion, the question of law is answered in favour of the assessee and against the revenue. This Tax Case (Appeal) is dismissed. No costs.

(A.S.M.,J.) (S.K.,J.)
04-11-2026

Index: Yes/No
Speaking order
Neutral Citation: Yes

SL

To

The Income Tax Appellate Tribunal Madras ‘C’Bench, Chennai

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