

In the High Court of Judicature at Madras

Dated : 13.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.773 of 2018

The Commissioner of Income Tax,
Chennai-34

...Appellant

Vs

M/s.Ceebros Hotels Pvt. Ltd.,
Chennai-28

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 09.6.2017 in ITA No.189/Mds/2017 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2011-12.

For Appellant : Mrs.R.Hemalatha for Mr.T.Ravikumar

For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 09.6.2017 passed by the Income Tax Appellate Tribunal (for brevity, the Tribunal) in ITA.No.189/Mds/2017 for the assessment year 2011-12.

3. The above tax case appeal is filed raising the following substantial questions of law :

"i. Whether the assessee is entitled to claim deduction under Section 35AD(v)(aa) for the assessment year 2011-12 even though the classification for three star category was obtained by the assessee only during the next assessment year 2012-13 ?

ii. Was it right on the part of the Tribunal to grant deduction under Section 35AD(v)(aa) especially when the assessee did not satisfy the conditions stipulated thereunder ? And

iii. Whether the Tribunal ought to have applied the decision of the Madhya Pradesh High Court in the case of CIT Vs. Global Reality reported in (2015) 65 Taxmann.com 204 wherein it has been held that issuance of compliance certificate after the cut off date would not make the assessee eligible to claim deduction? "

4. The short question, which falls for consideration, is as to whether the assessee is entitled to claim deduction under Section 35AD(5)(aa) of the Act.

5. The Assessing Officer, while completing the assessment under Section 143(3) of the Act, vide order dated 24.3.2014, denied the benefit on the ground that the assessee obtained the classification as a three star category hotel only during the next assessment year i.e. 2012-13. The correctness of the order of the Assessing Officer was challenged by the assessee before the Commissioner of Income Tax (Appeals)-1, Chennai [for

short, the CIT (A)], who, by order dated 03.1.2017, dismissed the appeal. The assessee carried the matter to the Tribunal, which, by the impugned order, allowed the appeal. Hence, the Revenue is before us.

6. We have perused the order passed by the Tribunal and we find that the reasons assigned by the Tribunal are just and proper. It will be worthwhile to extract the following findings rendered by the Tribunal in paragraph 5.1 of the impugned order :

"The Department has not disputed the operation of the new hotel of the assessee in the financial year 2010-11 because the Department has accepted the income, which was offered to tax. Once the Department has accepted the income of the assessee from hotel business, which was newly established and become fully operational in the year 2010, then the assessee is very much eligible for claiming investment allowance. If we accept to the contention of the Assessing Officer that the assessee was granted star category classification only on 10.5.2011, the Assessing Officer should not have accepted the income of the assessee offered to tax, which was earned in lieu of star category of the hotel. Once the application for star category classification dated 17.4.2010 was not rejected by the India Tourism and even after inspection on 22.4.2011, the HRACC has not found any discrepancy and very well recommended for classification under three star category, we find no fault on the assessee, since the assessee has, vide its letter dated 02.8.2010, informed about the fully

operational of the hotel to the India Tourism and it was the delay on the part of the HRACC to inspect the hotel before end of the financial year, for which, the assessee cannot be penalized.”

7. From the above, it is clear that the Revenue has not disputed the fact that the nature of business carried on by the assessee is a specified business as referred to in Clause (aa) to Sub-Section (5) of Section 35AD of the Act.

8. The Revenue seeks to non suit the assessee by contending that they obtained three star category recommendation from the Ministry of Tourism, Government of India only in the next assessment year.

9. The facts noted by the Tribunal clearly show that the application filed by the assessee for such a classification was made on 19.4.2010 i.e in the assessment year 2010-11. Thereafter, it appears that there are certain procedure to be followed and an inspection requires to be conducted by an Approving Committee constituted for such purpose. The manner, in which, the inspection was conducted and the time frame taken by the Competent Authority are all beyond the control of the assessee. Thus, a holistic interpretation of the provisions has to be made and if the same is done, the attendant circumstances as to how the assessee was treated by the Department assume importance.

10. The Revenue has not disputed the operation of the new hotel from the financial year 2010-11, as it had accepted the income, which was offered to tax. Further, the Revenue accepted the income of the assessee from the

hotel business, which was newly established and which became fully operational in the year 2010. Therefore, the Tribunal was right in concluding that the Assessing Officer should not have accepted the income of the assessee offered to tax, which was earned in lieu of star category of the hotel.

11. Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue submits that obtaining star category recommendation from the Ministry of Tourism, Government of India is a pre-requisite for being entitled to the benefit of Section 35AD of the Act. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Orissa State Warehousing Corporation Vs. CIT [reported in (1999) 237 ITR 589]**.

12. Firstly, the decision in **Orissa State Warehousing Corporation** did not arise out of the proceedings under Section 35AD of the Act, but only under Section 10(29) of the Act. Considering the provisions under Section 10(29) of the Act, the Hon'ble Supreme Court held that the pre-requisite element for the entitlement as regards the claim for exemption is the income, which is derived from letting out of godowns or warehouses for storage, processing or facilitating marketing of commodities and not otherwise. It was further held that if the letting out of godowns or warehouses is for any other purpose, the question of exemption would not arise.

13. In our considered view, this decision can be of no assistance to the case of the assessee, as, in the instant case, the requirement for obtaining a classification with regard to the star category hotel is not in the hands of the assessee nor that of the Revenue. The classification is done by the Ministry of

Tourism, Government of India. Thus, what is required to be seen in the case on hand is as to how the assessee is treated by the Department. In the preceding paragraphs, we have noted the findings rendered by the Tribunal, which, in our considered view, are fully right.

14. The learned Senior Standing Counsel for the Revenue also places reliance on the decision of the High Court of Madhya Pradesh in the case of ***CIT, Bhopal Vs. Global Reality [reported in (2015) 379 ITR 107]***.

15. The decision in ***Global Reality*** arose under Section 80IB of the Act relating to deductions – profit and gains from industrial undertakings other than infrastructure development undertaking. The assessee therein was a partnership firm engaged in the construction and sale of houses. The housing project approved by the Municipal Corporation was started before 31.3.2004 by the assessee. The completion certificate of the project was not issued by the Local Authority before the cut off date i.e. 31.3.2008, but was issued on 04.5.2010. Later, it was clarified by the Local Authority that the date of completion of the project was 27.2.2008. Relying upon the clarification, the assessee claimed deduction under Section 80IB(10)(a) of the Act. The Assessing Officer disallowed the claim of the assessee on the ground that the completion certificate was not produced before 31.3.2008. The Court examined as to whether the issuance of completion certificate after the cut off date by the Local Authority, but mentioning the date of completion of the project before the cut off date did not fulfill the condition specified in Clause (a) of Section 80IB(10) of the Act read with Explanation (ii) thereunder.

Taking note of the facts of the case, the Court held that securing of the

completion certificate before the cut off date is not directory in view of the express provision in Section 80IB(10)(a) of the Act and Explanation (ii) thereunder. We have perused the said provision. Explanation (ii) has specifically stated that the date of completion of construction of housing project shall be taken to be the date, on which, the completion certificate in respect of such housing project is issued by the Local Authority. Thus, interpreting the said provision, the Court held that it was directory.

16. However, the case on hand is entirely different. The test would be as to whether the provisions of Section 35AD of the Act would apply to specified business referred to in Sub-Section (2) if it commences operations and in the case of business like that of the assessee, on or after 01.4.2010, where specified business is in the nature of building and operating new hotel of two star or above category as classified by the Central Government. We find nowhere in Clause (aa) to Sub-Section (5) of Section 35AD of the Act mandating that the date of certificate should be with effect from a particular date. Therefore, the provision, which is obviously to encourage establishment of hotels of a particular category, should be read as a beneficial provision and therefore, the interpretation given by the Tribunal considering the facts of the case is perfectly valid and justified. For the above reasons, we find no grounds to interfere with the order passed by the Tribunal.

17. Accordingly, the above tax case appeal is dismissed. No costs.

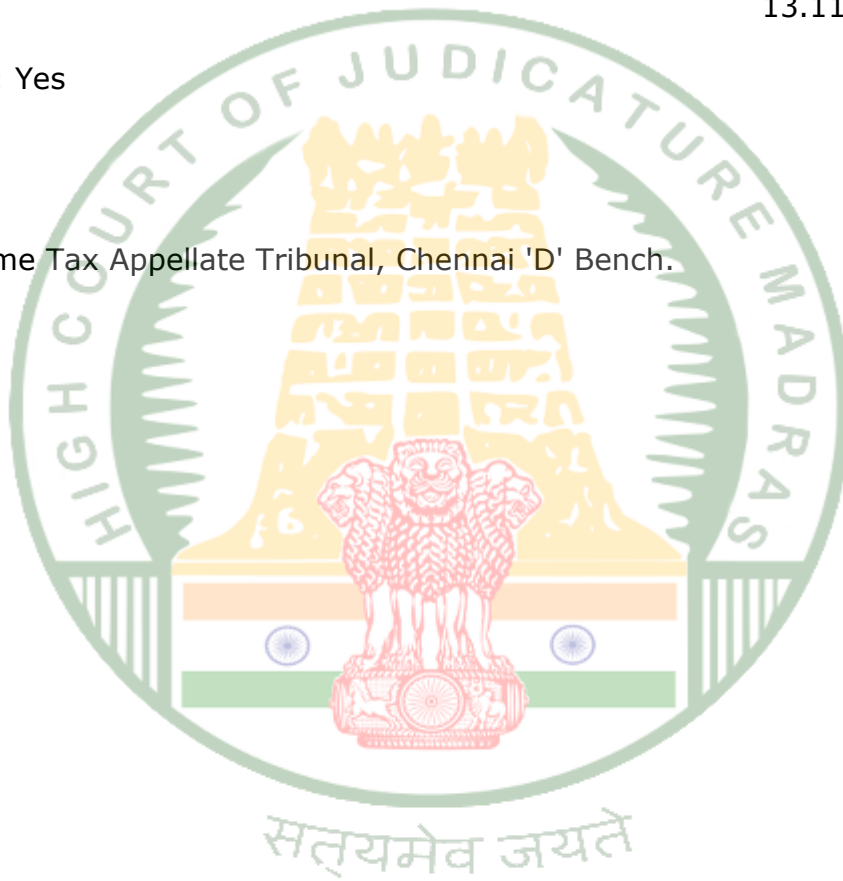
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Internet : Yes

To

The Income Tax Appellate Tribunal, Chennai 'D' Bench.

RS



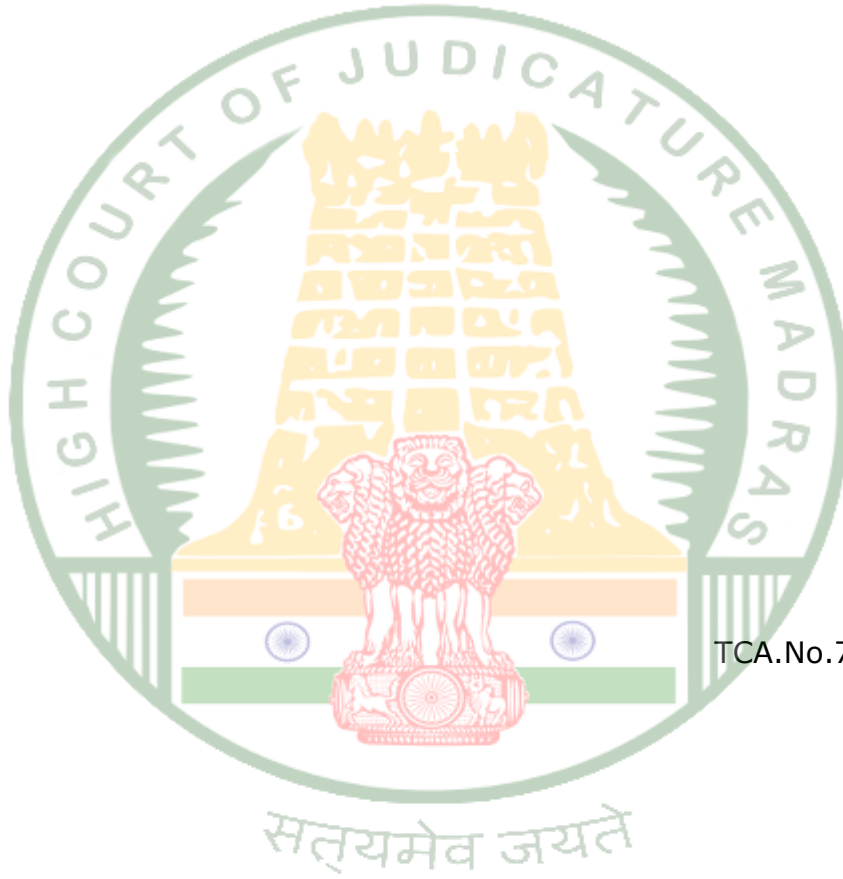
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