

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 509 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE K.J.THAKER

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

THE COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

EXPRESS RESORTS & HOTELS LTD....Opponent(s)

Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MR MANISH J SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 11/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' (hereinafter referred to as 'the Tribunal') dated 14.09.2006 in ITA No. 1497/Ahd/2006 for the Assessment Year 2002-03, the revenue has preferred the present Tax Appeal.

1.1 This appeal was admitted by this Court on 28.11.2007 for consideration of the following substantial question of law:

(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sanitary and pipe fittings fixed to the hotel building constituted 'plant' so as to be entitled to depreciation @ 25% despite these fittings being inseparably integrated with the building used as hotel in respect of which separate rate of depreciation 20% is provided w.e.f the assessment year 1988-89?

(B) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in treating electrical installations in the building of the assessee used as hotel as a part of plant for the purposes of depreciation, without taking note of the words 'fittings used in hotels' under the heading 'Furniture and fittings' in the Depreciation Schedule specifically providing for deprecation at the rate of 15% thereon?

2. The assessee firm is engaged in the business of hotel and restaurant. During the course of assessment proceedings, the assessing officer noticed that the assessee had claimed expenditure spent on glow signboard and hoardings as capital

expenditure and depreciation on furniture. The Assessing Officer allowed depreciation @ 20% on furniture and treated the installations as electric fittings and allowed depreciation @ 15%. On appeal the CIT (Appeals) held these installations as part of plant and allowed depreciation @25%

2.1 On appeal before the Tribunal, by impugned order, the Tribunal upheld the order of CIT(A). Being aggrieved and dissatisfied with the impugned order passed by the Tribunal, the revenue has preferred the present Tax Appeal for consideration of the aforesaid substantial question of law.

3. The issue involved in the present Tax Appeal is now not *res integra* in view of the decision of the Honble Supreme Court in the case of **CIT vs. Taj Mahal Hotel reported in 82 ITR 44** wherein sanitary fittings have been treated as plant as well as **CIT v. Anand Theatres [2000] 244 ITR 192** wherein sanitary fittings as well as electrical installations are treated as plant.

4. Mr. K.M. Parikh, learned advocate on behalf of the revenue is not in a position to dispute the above and is not in a position to show and/or point out any contrary decision.

5. The apex court in the case of **Anand Theatres (supra)** has considered the decision in the case of Taj Mahal Hotel (supra) and held that sanitary fittings and the electrical installations are clearly "plant". Once they are regarded as plant the fact that they are used in a hotel building and fixed to the building does not render those fittings depreciable in the same manner as the building itself, when the provisions

dealing with depreciation in the Act make a clear distinction among building, machinery and plant. When a thing by itself is to be classified under one head as "plant" or "building", it should not, normally, when used along with an item falling under another head be treated as also falling under the other head by a process of osmosis as it were. The electrical installations and sanitary fittings which by themselves are "plant" for the purpose of depreciation in the scheme of Section 32, cannot be regarded as "building" when such fittings are fitted to the building. Those fittings do not become brick or mortar which are essential for the construction of the buildings. They remain electrical and sanitary fittings which are meant to be used for a purpose other than giving shelter. These installations are installations which are capable of being used in a wide variety of circumstances to make a variety of goods. Their use is not confined to hotel buildings. Such installations, therefore, remain "plant" only even when they are installed in a building used as a hotel.

6. Having heard learned advocates appearing on behalf of the parties and the questions posed for consideration before us reproduced hereinabove and considering the decision of the Apex Court rendered in **Anand Theatre (supra)** as well as **Taj Mahal Hotel (supra)** which has been considered by the Rajasthan High Court in the case of **CIT Vs. Jodhan Real Estate Development Co. P. Ltd reported in 268 ITR 432** which has been relied upon by the Tribunal, the questions which are raised in the present appeal are required to be answered in favour of the assessee. We are not giving further elaborate reasons for the same as in the aforesaid case, the Apex Court has already held that the sanitary and pipeline

fittings as well as electrical installations fell within the definition of "plant". The court also held that the fact that the assessee claimed depreciation on the basis that sanitary and pipeline fittings fell under "furniture and fittings" in rule 8(2) of the Indian Income-tax Rules, 1922, did not detract from its position as the rules cannot take away what is conferred by the Act or whittle down its effect.

7. In view of the above, the questions raised in the present appeals are answered in the affirmative i.e. against the appellant – revenue and in favour of the assessee. The impugned order passed by the Tribunal is confirmed. Hence, the present Tax Appeal is dismissed.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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THE HIGH COURT
OF GUJARAT

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