IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 826/2006

06.12.2007
Date of decision : December 6, 2007
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THE COMMISSIONER OF INCOME TAX .....
Appellant
Through Ms. Sonia Mathur, Advocate

versus

M/S NIRULA CORNER HOUSE LTD. ..... Respondent
Through Mr. P.N. Monga, Advocate
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ITA 827/2006

THE COMMISSIONER OF INCOME TAX .....
Appellant
Through Ms. Sonia Mathur, Advocate

versus

M/S NIRULA CORNER HOUSE LTD. ..... Respondent
Through Mr. P.N. Monga, Advocate

AND

46+ ITA 828/2006

THE COMMISSIONER OF INCOME TAX .....
Appellant

Through Ms. Sonia Mathur, Advocate

versus

M/S NIRULA CORNER HOUSE LTD. ..... Respondent
Through Mr. P.N. Monga, Advocate

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR
O R D E R

1. These three appeals are directed against the common order dated 20th December, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench B , New Delhi (Tribunal) in ITA Nos. 799/Del/1993, 5839/Del/1993 and 4492/Del/1998 for the assessment years 1989-90, 1987-88 and 1986-87 respectively.

2. The common question of law that the Revenue urges in these appeals reads as under:

Whether in the facts and circumstances, the Income Tax Appellate Tribunal erred in holding cold room as plant and not building thereby allowing higher rate of depreciation/investment allowance under Section 32/32A of the Income Tax Act, 1961

3. The Assessee, which is running a hotel and restaurant, had built a bulk kitchen at Okhla, New Delhi. The Assessee based its claim for depreciation and investment allowance on the premise that the kitchen itself was a plant and that in any event the cold rooms which formed part thereof constituted plant,

since they were essential for the business of the Assessee which included the production of ice creams.

4. The Assessing Officer (AO) disallowed the claim for depreciation and investment allowance holding that the central bulk kitchen was not a plant.

5. The Assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] who by an order dated 1st April, 1998, for the Assessment Year 1986-87, followed an earlier order dated 27th November, 1992 passed by the CIT (A) for the Assessment Year 1989-90. It had been held by the CIT (A) in that order that the entire building could not be said to be plant but that the cold rooms which was an integral part of the plant could since they were essential to the manufacturing process. Accordingly, the AO was directed to grant depreciation on the amount spent on the cold rooms. Likewise, in relation to investment allowance, the CIT (A) followed the earlier order dated 27th November, 1992 where it had been held that the cold room, was approximately 19.90% of the total plant was in the nature of plant and machinery and that investment allowance should be allowed to that extent.

6. The Tribunal upheld the order of the CIT (A) on both depreciation and investment allowance. In relation to the claim under Section 80-I of the Act, the Tribunal restored the matter to the file of the AO for reconsideration.

7. It is urged by Ms. Sonia Mathur, learned standing counsel for the Revenue that the question whether the bulk kitchen is an industrial undertaking for the purposes of Section 80-I of the Act having been restored to the file of the AO for reconsideration, the question concerning the allowability of higher

rate of depreciation and investment allowance under Section 32 and 32-A of the Act respectively should also be restored to the file of the AO. In other words, her contention was that the determination whether the bulk kitchen is an

industrial undertaking would have a bearing on whether the depreciation and investment allowance should be allowed on the cold rooms.

8. We are unable to agree with the submissions of learned counsel for the Revenue. It has been concurrently held by both the CIT (A) as well as the Tribunal that the depreciation and investment allowance on the cold rooms should be allowed since the cold rooms were essential for the production of ice creams. The CIT (A) in the order dated 27th November, 1992, which has been followed by that authority for the assessment years which we are concerned, has correctly concluded that even if the bulk kitchen cannot be said to be a plant, the cold room, which is essential to the manufacturing process, does answer the description of a plant and that both depreciation and investment allowance in respect thereof is permissible. We do not find any perversity in the said finding which has been concurred with by the Tribunal by following the decisions of this Court in R.S. Chemical Industries v. Commissioner of Income Tax [1982] 134 ITR 330 and Commissioner of Income Tax v. Pure Ice Cream Co. [1981] 129 ITR 394.

9. In view of the conclusion that the cold room is in the facts of the present case a plant, the question concerning the allowability of the depreciation and investment allowance thereon need not depend on the answer to the

question whether the entire bulk kitchen can be considered to be an industrial undertaking for the purposes of Section 80-I of the Act.

10. No substantial question of law arises in these appeals and they are dismissed as such.

MADAN B. LOKUR, J

S. MURALIDHAR, J

DECEMBER 06, 2007

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