IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

I.T.A.No.34 of 2004

(AGAINST THE ORDER DATED 29.11.2001 IN I.T.A.NO.645(COCH)/96
OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN,
ASSESSMENT YEAR 1993-94)
....

APPELLANT/RESPONDENT IN I.T.A:-

MIL CONTROLS LTD.,
ALUVA.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR
SMT.PRIYA MANJOORAN

RESPONDENT/APPELLANT IN I.T.A.:-

COMMISSIONER OF INCOME TAX,
COCHIN.

BY STANDING COUNSEL FOR GOVERNMENT OF INDIA (TAXES)
SRI.GEORGE K. GEORGE.

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

I.T.A.No.34 of 2004 &
C.M.Appln.No.1079 of 2004

Dated, this the 14th day of November, 2007

<u>JUDGMENT</u>

<u>H.L.Dattu, C.J.</u>

Delay in filing the appeal is condoned.

(2) By consent of the learned counsel appearing for the parties, the appeal is taken up for final hearing.

(3) Appellant is a company incorporated under the provisions of the Companies Act. It is involved in the manufacture of valve, body, bonnet, its accessories, etc. For the assessment year 1993-94, the assessee had claimed deductions of the amounts paid towards rent for the guest house. The assessing authority had disallowed the claim so made. Aggrieved by the said order, the assessee had carried the matter in appeal before the first appellate authority, who by its order dated 10.9.1996 has allowed the claim made by the assessee. Aggrieved by the said order the Revenue had carried the matter by way of second appeal before the Income Tax Appellate Tribunal, Cochin Bench, Cochin in I.T.A.No.645 of 1996. The Tribunal has allowed the Revenue's appeal.

(4) Aggrieved by the orders so passed by the Tribunal, the assessee is before us in this appeal filed under Section 260A of the Income Tax Act, 1961. The assessee has framed only one question of law for our consideration and decision. The same is as under:

> "Whether on the facts and in the circumstances of the case, was the Income Tax Appellate Tribunal justified in confirming the disallowance of rent paid for guesthouse?

(5) The issue so framed by the assessee is no more debatable in view of the law laid down by the apex Court in the case of *Britannia Industries Ltd*. v. *Commissioner of Income-Tax and another* [(2005) 278 ITR 546]. In the said decision the Supreme Court has stated as under:

> "The intention of the Legislature is clear and unambiguous: the intention was to exclude from deduction the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purpose of a guest house of the nature indicated in sub-section (4) of section 37. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodation used for the purpose of the business or profession, then the Legislature would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in section 37(5) and the provisions of sections 31 and 32 would have been sufficient for that purpose."

(6) In view of the law declared by the apex Court, the question of law framed by the assessee requires to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

vns/dk