

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.7.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.226 OF 2018 & CMP.NO.6584 OF 2018

(heard through video conferencing)

Pandian Hotels Ltd., Race
Course, Tallakulam, Madurai

...Appellant

The Deputy Commissioner of
Income Tax, Corporate Circle-2,
Madurai

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.10.2017 made in ITA.No.1020/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13.

For Appellant : Mrs.Pushya Sitaraman, SC for
Mr.Arun Kurian Joseph
For Respondent : Mr.M.Swaminathan, SSC assisted
By Mrs.V.Pushpa, SC &
Mrs.S.Premalatha, SC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mrs.Pushya Sitaraman, learned Senior Counsel appearing on behalf of Mr.Arun Kurian Joseph, learned counsel on record for the appellant - assessee and Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Mrs.V.Pushpa, learned Standing Counsel and Mrs.R.Premalatha, learned Standing Counsel appearing for the respondent - Revenue.

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1951 (for short, the Act) is directed against the order dated 16.10.2017 made in ITA.No.1020/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2012-13.

3. The appeal has been admitted on 10.4.2018 on the following substantial question of law :

“Whether expenditure incurred in the renovation and redecoration of rooms in a hotel would amount to capital expenditure or revenue expenditure ?”

4. The appellant is engaged in the business of running a three star hotel and for the assessment year in question namely 2012-13, the assessee filed their return of income on 29.9.2012 admitting a total income of Rs.19,06,620/- and an intimation under Section 143(1) of the Act was issued. Subsequently, the assessment was selected for scrutiny and the assessment was completed under Section 143(3) of the Act by order dated 31.3.2015, by which, there was a disallowance of the expenditure to the tune of Rs.1,43,37,050/- incurred towards repairs and renovation expenses.

5. The assessee contended before the Assessing Officer that the expenses were incurred for repairs and renovation of 18 rooms out of 57 rooms in the hotel and that there was no capital expenditure incurred by the assessee. It was further contended that there was no increase in the room capacity nor creation of any new asset, but the expenses were incurred only to preserve an existing asset and that the assessee was required to renovate the old rooms in order to attract

customers and to maintain the standard of a three star hotel. However, the Assessing Officer did not accept the explanation given by the assessee and treated the sum of Rs.1,51,20,800/- as capital expenditure and after allowing depreciation at the rate of 10%, the Assessing Officer added the balance amount of Rs.1,36,08,720/-.

6. Aggrieved by such order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Madurai [for brevity, the CIT(A)], who, by order dated 29.1.2016, allowed the assessee's appeal primarily holding that the expenses were incurred only to preserve the existing asset and that the assessee had to renovate the old rooms in order to attract foreign customers and to maintain the standard of a three star hotel. With regard to its enduring benefit as applied by the Assessing Officer, the CIT(A) opined that the test of enduring benefit might fail on certain occasions, that the correct test was to see as to whether there was creation of any new asset and that admittedly, the assessee had not created any new asset, but had undertaken repairs and renovation only in the existing rooms and that too, only in 18 rooms out of 57 rooms available in the hotel.

7. The Revenue carried the matter on appeal to the Tribunal by contending that the Assessing Officer had correctly treated the repairs and renovation expenses as capital expenditure as against the claim of the assessee as a revenue expenditure. The Tribunal, by the impugned order, allowed the Revenue's appeal and this is how the assessee is before this Court by way of this tax case appeal.

8. On a reading of the order of the Tribunal, we find that the Tribunal had proceeded on a different footing as if the claim was as against current repairs. Though the Tribunal referred to the decisions, which were relied upon by the assessee, it held that those decisions were not applicable because there was no finding as to the expenditure under reference answering the description 'current repairs' in the decision of the Apex Court in the case of **Ballimal Naval Kishore Vs. CIT [reported in (1997) 224 ITR 414]**.

9. When this matter was heard for admission, it appears that the assessee canvassed that the expenditure was erroneously treated to be capital expenditure and the Tribunal erred in relying upon the decision of the Hon'ble Supreme Court in the case of **Ballimal Naval Kishore** where the claim was for current repairs unlike the case of the assessee where they made a claim that it was a revenue expenditure

under Section 37 of the Act. For that reason, the question of law was reframed by the Hon'ble First Bench of this Court to consider as to whether the expenditure incurred in the renovation and redecoration of rooms in a hotel would amount to capital expenditure or revenue expenditure.

10. In our considered view, the test to be applied to decide as to whether the expenditure is revenue or capital expenditure has been brought out in the decision of the Hon'ble Apex Court in the case of ***Empire Jute Company Limited Vs. CIT [reported in 124 ITR 1]***, wherein it has been held that there may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none-the-less, be on revenue account and the test of enduring benefit may break down. It was pointed out that it is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. It was further held that what is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. It was also held that if the advantage consists merely in facilitating the

assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.

11. The learned Senior Standing Counsel appearing for the Revenue has relied upon the decision of the Hon'ble Supreme Court in the case of **Ballimal Naval Kishore** and the decision of this Court in the case of **CIT, Madurai Vs. Viswams [reported in (2019) 105 Taxman.com 289]**.

12. This Court is of the view that there can be a no straight jacket formula, which can be applied while deciding the issue as to whether the expenditure is in the revenue field or in the capital field and facts are very relevant to be taken note of. This would be the approach while deciding such cases.

13. Now, we may proceed to discuss the decision of this Court in the case of **CIT Vs. Ooty Dasaprakash [reported in (1999) 237 ITR 902]**. We refer to this decision because this is more or less an identical case to that of the assessee before us. The Division Bench

held that the expenditure was incurred solely for repairs and modernising the hotel and replacing the existing components of the building, furniture and fittings, with a view to create a conducive and beautiful atmosphere for the purpose of running of a business of a hotel and it goes without saying that the expenditure incurred by the assessee for the relevant assessment years in repairing and modernising the hotel and replacing the existing components of a portion of the building, furniture and fittings cannot at all be stated to be of enduring in nature, in the nature of being a "capital expenditure"; but, definitely such an expenditure would fall under the category of "revenue expenditure" in nature to be allowed, as a deduction under [Section 37](#) of the Income Tax Act. In the aforementioned decision, the Division Bench followed the said assessee's own case viz ***CIT Vs. Dasaprakash [reported in (1978) 114 ITR 210 (Madras).***

14. In the decision of the Karnataka High Court in the case of ***CIT Vs. Mac Charles (India) Limited [reported in (2015) 233 Taxman 0177]***, the assessee, carrying on the business of hotel, incurred expenses under repairs and maintenance of the hotel building. The Assessing Officer disallowed the said expenditure. The

First Appellate Authority confirmed the said order and the assessee filed an appeal before the Tribunal. The Tribunal held in favour of the assessee, aggrieved over which, the Revenue preferred an appeal before the Division Bench of the Karnataka High Court. The Court, after referring to the decision of the Hon'ble Apex Court in the case of **Ballimal Naval Kishore** and the decision of the Hon'ble Apex Court in the case of **CIT Vs. Saravana Spinning Mills (P) Ltd. [reported in (2007) 293 ITR 201]**, held that the basic test to find out as to what would constitute repairs is that the expenditure must have been incurred to preserve and maintain an already existing asset and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage. It was held that when no extra flooring space or extra room capacity is added on account of such repairs, it cannot be said that a new asset has come into existence and all these repairs are done to preserve and maintain an already existing asset. सत्यमेव जयते

15. In the decision of the Delhi High Court in the case of **Comfort Living Hotels P. Ltd. Vs. CIT [reported in (2014) 363 ITR 182]**, the Court applied the decision of the Hon'ble Supreme Court in the case of **Empire Jute Company Limited** that an action

that merely facilitates the assessee's business by making it more profitable, while leaving the fixed capital untouched, is a revenue expenditure.

16. In the decision of the Gujarat High Court in the case of **CIT Vs. CAMA Hotels Ltd. [reported in (2015) 235 Taxman 0206]**, an identical question arose for consideration. The Court, after referring to the decisions in the cases of **Empire Jute Company Limited, Ballimal Naval Kishore** and **Comfort Living Hotels P. Ltd.**, held that the expenditure incurred by the assessee for renovating a hotel, rooms, conference halls, etc., was a revenue expenditure.

17. The decision of this Court referred to by the learned Senior Standing Counsel for the Revenue in the case of **Viswams** is distinguishable on facts principally because the building was leased out and the assessee firm therein put up further construction by raising the building upto five floors and taking note of the facts therein, the case was decided in favour of the Revenue.

18. In the instant case, the Revenue does not dispute the fact that the number of rooms in the assessee's hotel remained at 57 and that there was no increase in the number of rooms and only 18 rooms

out of 57 rooms were renovated and repaired. Furthermore, the assessee specifically contended that the renovation and repairs neither increases their capacity nor does it empower to revise the basic room tariff because it can be done only after considering further facts such as market condition remaining in Madurai City and with the concurrence of M/s.ITC Limited, as they only have a franchisee agreement with the assessee.

19. Further, the granite and marble used by them will not last long and there is no guarantee and they may develop cracks and lose their shine and even become obsolete in a couple of years. These facts were never disputed before the Assessing Officer or before the CIT(A). As rightly contended by the learned counsel for the assessee, the Tribunal did not consider the issue, but was of the opinion that it was neither the case of the assessee nor that of the Revenue that the claim was for current repairs.

20. It is submitted by the learned Senior Standing Counsel for the Revenue that the matter may be remanded to the Tribunal for a fresh decision in order to take a decision as to the nature of expenditure i.e. whether capital or revenue.

21. We find that the assessment is for the year 2012-13 and the facts are not in dispute. It is only an application of legal principle to the given facts. Therefore, we hold that there is no justification in remanding the matter to the Tribunal or to any other Lower Authority. In the light of the above discussion, we hold that the expenditure incurred by the assessee is a revenue expenditure and not a capital expenditure.

22. Accordingly, the tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial question of law framed for consideration is answered in favour of the assessee and against the Revenue. Consequently, the order passed by the CIT(A) stands restored. No costs. Consequently, the connected CMP is closed.

16.7.2020

To

- 1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.
- 2.The Deputy Commissioner of Income Tax, Corporate Circle-2, Madurai

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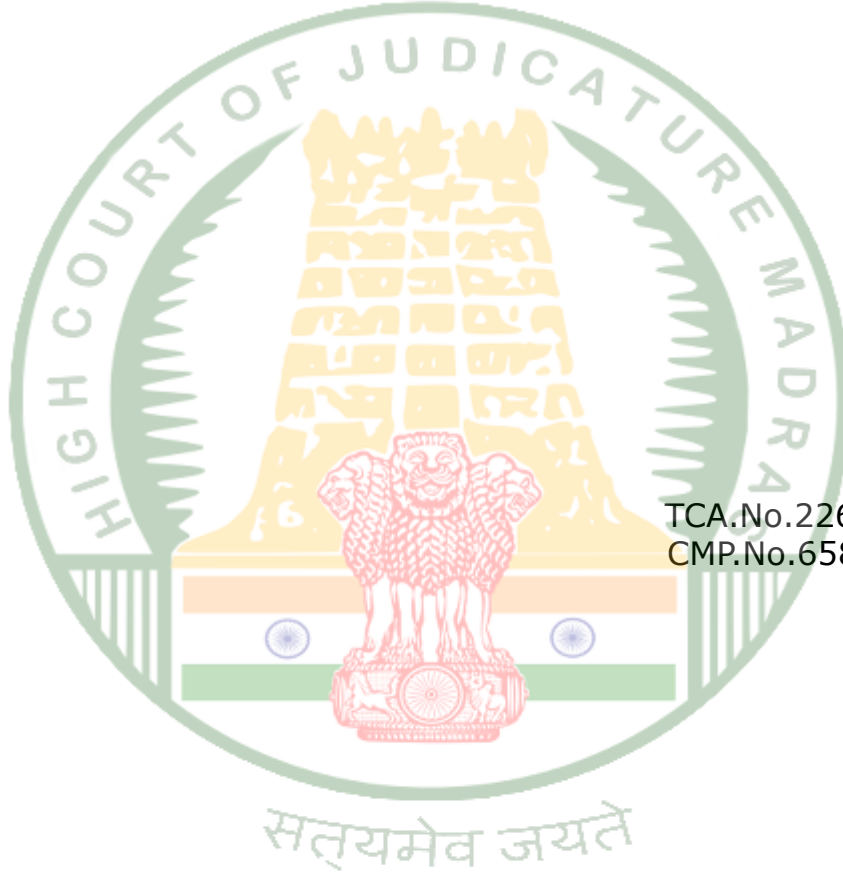
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V.BHAVANI SUBBAROYAN, J

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