

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

T.C.(Appeal) No.271 of 2005

The Commissioner of Income-tax,
Nungambakkam High Road,
Chennai-600 034.

... Appellant

Vs.

M/s.Aruna Sunrise Hotels Limited,
145, Sterling Road,
Chennai-600 034.

... Respondent

(Respondent amended as per order dated
10.09.2014 in M.P.No.1/2014 in T.C.No.217/2005)

Appeal filed under Section 260A of Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, Madras "A"
Bench, Chennai, in I.T.A.No.2132(Mds)/2004 for the assessment year
1990-91 dated 30.11.2004.

For Appellant : Mr.T.Ravikumar

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.T.Ravikumar, learned counsel for the appellant. Though the respondent has been served and their name is also printed in the cause list, none appears on behalf of them.

2. This appeal is directed against the order dated 30.11.2004, passed by the ITAT in I.T.A.No.2132(Mds)/2004, for the assessment year 1990-91.

3. This tax case appeal has been admitted on the following substantial questions of law:

"(i). Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in allowing a sum of Rs.26,90,954/- claimed as additional price paid for sugarcane for the assessment year 1990-91 especially when there was no liability to pay the amount over and above the administered price?

(ii). Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in allowing a sum of Rs.26,90,954/- especially by letter dated 30.12.1989 of the Sugarcane

Growers Association clearly stating that any amount paid in excess of the administered price would be treated as advance and recoverable?

(iii). Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that the liability and crystalized during the assessment year itself and therefore allowable which fact is not supported by any evidence on record?

(iv). Whether on the facts and in the circumstances of the case and on the materials place, the Income Tax Tribunal could have arrived at the finding, especially when the letter of the association clearly states that the amount was only advance and had to be returned?"

4. Though four substantial questions of law have been framed, the entire issue revolves around the payment effected by the assessee to the cane growers in excess of the price fixed by the Government. The assessing officer while completing the assessment under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by order dated 19.03.1993, held that the additional price paid by the assessee to the cane growers is only an advance recoverable under the terms agreed to in the previous year and it will not be possible to recover the excess payment contrary to

the undertaking given by the Sugarcane Growers Association on behalf of its members and therefore, the excess price debited in the accounts was deleted.

5. The assessee preferred appeal before the Commissioner of Income-tax (Appeals) -II, who by order dated 28.05.1993, allowed the appeal pointing out that the issue has to be viewed from the point of view of the assessee, as it cannot be denied that the payment made to the cane growers, though in excess of the administered price determined by the Sugarcane Control Order, was eligible to be treated as an allowable expenditure exclusively and necessarily incurred for the purpose of business.

6. Further, it is pointed out that the liability to pay at Rs.22 per metric tonne has to be treated as an ascertained liability in view of the fact that the assessee has been following mercantile system of accounting and the payment was made during the relevant accounting year. Accordingly, the disallowance was deleted by the appellate authority. In doing so, reliance was placed on the decision in the case of **CIT vs. Ashok Iron & Steel Rolling Mill** reported in **(1993) 199 ITR 815 (Allahabad)**. The Revenue carried the matter on appeal to

the Tribunal, which dismissed the appeal filed by the Revenue.

7. Mr.T.Ravikumar, learned counsel for the appellant contended that there is no liability to pay any amount over and above the price fixed by the Government and the letter of the Sugarcane Growers Association, dated 30.12.1989, clearly states that the amount paid in excess of the administered price would be treated as advance and recoverable. Nextly, it is contended that the Tribunal had no materials before it to come to a conclusion that the payment has been crystallised in the assessment year itself.

8. We have carefully considered the submissions made and perused the materials placed on record.

9. We are in an entire agreement with the view expressed by the Commissioner of Income Tax (Appeals) as affirmed by the Tribunal. The Commissioner of Income Tax (Appeals), rightly viewed the matter from the point of view of the assessee considering the nature of business carried on by them. Further, mere use of the word "advance" in the letter of the Sugarcane Growers Association by itself would not change the character of the payment, especially when the amount paid was an ascertained liability and the assessee was following mercantile

system of accounting and the payment was also done during the relevant accounting year. Furthermore, the Tribunal rightly observed that the assessee could not avoid this payment in view of the business expediency, as the entire business of the assessee was depending upon the supplies of sugarcane. For the above reasons, we find, there are no merits in the appeal.

10. The tax case appeal is dismissed and the substantial questions of law, which have been framed are decided against the Revenue and in favour of the assessee. No costs.

(T.S.S., J.) & (N.S.S., J.)

10.04.2018

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Index:Yes/No

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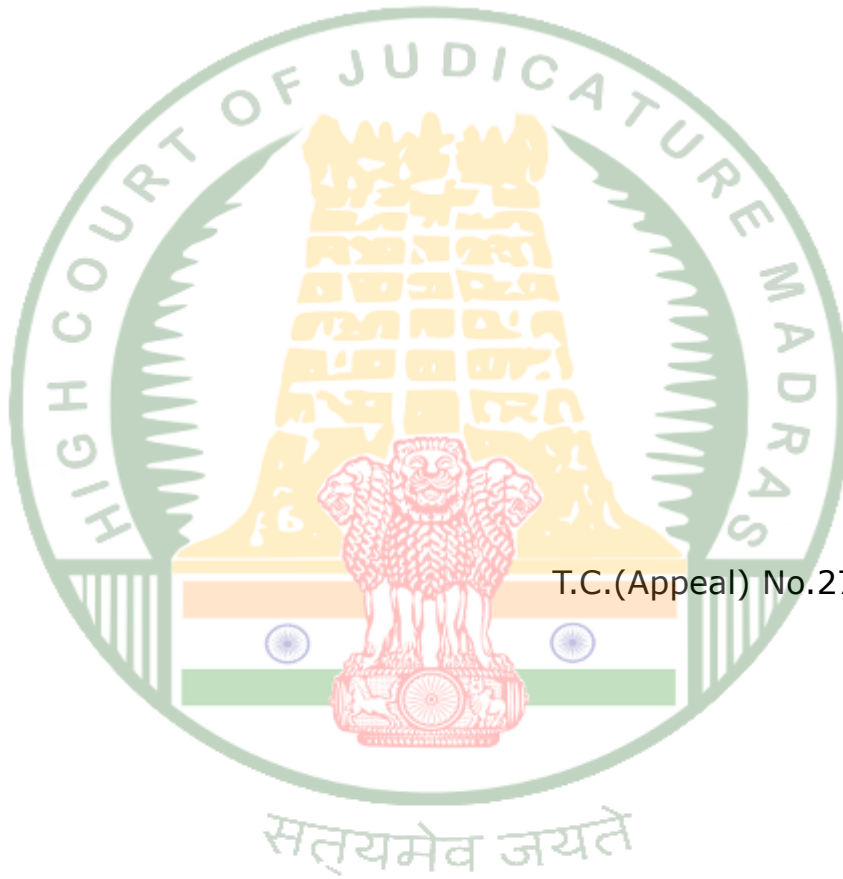
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