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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.797 OF 2014

Commissioner of Income Tax-2

... Appellant

vs.

M/s. Seaprincess Hotels and
Properties Pvt.Ltd.

... Respondent

.....

Mr. Suresh Kumar for the Appellant.

Ms Aasifa Khan i/b Mr.Niraj Punmiya for the Respondent.

.....

CORAM : M.S.SANKLECHA &

A.K. MENON, JJ.

DATE : 13th FEBRUARY, 2017

P.C. :

1. This Appeal under Section 260-A of the Income Tax Act, 1961 ('the Act') challenges the order dated 9th October, 2013 passed by the Income Tax Appellate Tribunal ('the Tribunal'). The impugned order is in respect of Assessment Year 2007-08.

2. The Revenue has urged the following re-framed question of law for our consideration:-

1. *"Whether, on the facts and in the circumstances of the case, the Tribunal, was correct in law, in deleting the addition of Rs.2.37 crores incurred for repairs and maintenance without appreciating that professional fees of*

Rs.23.99 lakhs paid for temporary plan created for construction of two new floors constituted "Capital Expenditure" as new asset was created and / or new extension to existing assets was made and hence, not allowable as revenue expenses u/s. 37(1) of Income Tax Act, 1961"

3. The question as framed consists of two issues, as under :

(i) The first issue is of legal and professional fees paid of Rs.23.99 lakhs for temporary plan for access and exit during the construction of two floors, to enable the running of the Hotel.; and

(ii) The second issue is in respect of expenditure of Rs.2.37 crores on repairs and maintenance of the Hotel building to enable the running of the Hotel during the construction of the two additional floors.

4. The respondent-assessee is engaged in the business of running a Five Star Hotel and Restaurant. During the subject Assessment year the respondent assessee was constructing two additional floors in its Hotel building. The amount spent on the same was capitalised at Rs.5.68 crores. In its return of income respondent-assessee had claimed the first issue i.e. legal and professional expenses amounting to Rs.40.70 lakhs as Revenue expenses. However, the Assessing Officer disallowed the expenses on account of Rs.23.99 lakhs holding it to be on Capital account.

5. On the second issue i.e. expenditure on repairs and maintenance, the respondent-assessee had claimed as revenue expenditure. However, the Assessing Officer disallowed an amount of Rs.2.37 crores after allowing depreciation on the ground that same was in the nature of capital expenditure. Thus the Assessing Officer by his order dated 29th December, 2009 disallowed a sum of Rs.2.60 crores (approx) on the above two issues and added to the income of the respondent-assessee.

6. Being aggrieved, the respondent-assessee filed an appeal on both the aforesaid issues viz. professional fees paid and amount spent on account of Repairs and Maintenance to the Commissioner of Income Tax (Appeals) (CIT(A)). However, the appeal filed by the respondent-assessee was dismissed.

7. Being aggrieved, the respondent-assessee filed an appeal to the Tribunal. So far as the first issue viz. Legal and professional fees is concerned the impugned order holds that a sum of Rs.22.44 lakhs was paid to professional interior designer, to provide an alternative access and exit to the Hotel during the period of construction of two additional floors. This expenditure was incurred for continuing to run its business and was allowed under Section 37(1) of the Act. So far as the balance expenditure on the above account, is concerned the Tribunal held that those expenses have been incurred in the regular course of Hotel business and has to be allowed. So far as the second issue viz. Repairs and

maintenance is concerned, the impugned order considers each head of expenditure and the manner of its use / utility in the running of the Hotel business to conclude that the same was Revenue in nature and allowable under Section 37(1) of the Act. The impugned order restored the issue to the Assessing Officer to restrict the disallowance on account of repairs and maintenance, keeping in view its observation in the impugned order.

8. Mr.Suresh Kumar, learned Counsel for the Revenue submits that the entire amount of Rs. 2.37 crores allowed in principle by the impugned order of the Tribunal as revenue expenditure is not allowable. This as the same is not an expenditure incurred for current repairs under Section 30 and 31 of the Act. In support he places reliance upon decision of the Supreme Court in ***Ballimal Naval Kishore vs. Commissioner of Income Tax [(1997) 224 ITR 414]***.

9. We find that the question as posed for our consideration is whether or not the expenses claimed as revenue expenditure could be allowed under Section 37(1) of the Act. The question as framed by the Revenue for our consideration does not even remotely suggest the applicability of Section 30 and 31 of the Act as is being argued before us. Nor is the question of law being sought to be changed. No submission was made before us as to why the expenditure should not be allowed under Section 37(1) of the Act.

10. So far as the first issue viz. Legal and professional fees are concerned, we

find that during the period of construction of two additional floors, a temporary operational plan had to be prepared providing for alternative access to and exit from the Hotel. This without compromising on the high standard expected by customers in respect of ambiance and comforts in a Five Star Hotel. The respondent-assessee had engaged a professional interior designer to plan temporary access and exit from the Five Star Hotel and for which an amount of Rs. 22.44 lakhs was paid. This expenditure which was incurred by the respondent was necessary for carrying on business as it resulted in increased turnover in the subject Assessment year as compared to the earlier years. Therefore, this expenditure is allowable as deduction under Section 37(1) of the Act as revenue expenditure. The balance of Rs.23.99 lakhs has been held by the Tribunal to be expenses incurred in normal / regular running of its business and therefore allowable as revenue expenditure under Section 37(1) of the Act.

11. So far as the second issue is concerned, viz. the amounts incurred for repairs of Hotel Building, we find that the Tribunal, on examination of nature of expenditure and result of the expenditure in the context of the respondent-assessee's activity of running Five Star Hotel has determined which expenses could be considered as revenue and which as capital in nature. After giving a finding on principle on each of the items of expenditure, the impugned order has restored the issue to the Assessing Officer to pass appropriate orders.

12. The entire exercise carried out by the Tribunal results in a finding of fact and this is not shown to us to be perverse in any manner.

13. In the above view, the question as proposed does not give rise to any substantial question of law. Thus not entertained.

14. Accordingly, Appeal dismissed. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)