

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

ITA No. 54 of 2009.

Date of Decision : 4.3.2009.

Commissioner of Income Tax-II, Chandigarh

....Appellant

Versus

M/s Star Resorts (P), Ltd. C-104, Industrial Area, Phase-VII, Mohali.

....Respondent

**CORAM:**           **Hon'ble Mr. Justice J.S. Khehar**  
                          **Hon'ble Mr. Justice Nawab Singh**

Present :           Ms. Urvashi Dhugga, Advocate,  
                          for the appellant.

J.S. Khehar. J. (Oral)

It is not a matter of dispute that the respondent-assessee while submitting his income tax return for the assessment year 2003-04 depicted cost incurred towards the construction activity for a Holiday Resort by depicting estimated cost thereof. It is apparent, that on the basis of estimated cost, it was not possible for the Revenue to determine the quantum of depreciation that had to be allowed to the respondent-assessee under Section 32 of the Income Tax Act, 1961. The Assessing Officer required the actual cost to be determined by the District Valuation Officer and on the basis thereof, allowed a deduction thereof in the nature of depreciation to the respondent-assessee. The aforesaid determination rendered by the Assessing Officer by his order dated 29.3.2006 was impugned by the respondent-assessee by preferring an appeal before the Commissioner of Income Tax (Appeals), Chandigarh. The Commissioner of Income Tax (Appeals) accepted the aforesaid appeal vide his order dated 27.12.2006. Dis-satisfied with the order rendered by the Commissioner of Income Tax (Appeals), Chandigarh dated 27.12.2006, the Revenue

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preferred an appeal before the Income Tax Appellate Tribunal. The aforesaid appeal was further dismissed by an order dated 23.7.2008.

It is apparent from the order passed by the Income Tax Appellate Tribunal dated 23.7.2008, that the issue in hand, namely, depreciation on the expenses incurred by the respondent-assessee on the construction of its Holiday Resort could not have been determined on the basis of any rough estimate. In order to afford an opportunity to the respondent-assessee to lead evidence, so as to establish the actual cost incurred by him in the construction of the aforesaid Holiday Resort, the Income Tax Appellate Tribunal remanded the matter back to the Assessing Officer so as to enable the respondent-assessee to lead evidence to establish the actual cost incurred.

We find no infirmity in the aforesaid determination at the hands of the Income Tax Appellate Tribunal. Needless to mention that in case the respondent-assessee is not in an effective position to produce evidence to substantiate the actual cost incurred by him (on the construction of the Holiday Resort) it will be open to the Assessing Officer to fall back on the report tendered by the District Valuation Officer.

For the reasons recorded hereinabove, as well as, the clarification depicted in the foregoing paragraph, we uphold the order passed by the Income Tax Appellate Tribunal dated 23.7.2008.

Dismissed.

(J.S. Khehar)  
Judge

(Nawab Singh)  
Judge

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