IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3360 OF 2006

M/S.MOTHER HOSPITAL PVT. LTD. ... Appellant

VERSUS

COMMISSIONER OF INCOME-TAX, TRICHUR ... Respondent

O R D E R

The brief facts involved in the instant appeal are that the **appellant**-M/s. Mother Hospital Private Ltd. is a private limited company, the shares in which are held by seven persons closely related to each other, **viz.,** (1) Dr. M. Ali; (2) Dr. Ayesha Beevi (wife of Dr. M. Ali); (3) Nisha, (4) Shabna and (5) Sharmini (all children of Dr. M. Ali and Dr.
Ayesha Beevi); (6) Khadeeja Beevi (mother of Dr. M. Ali); (7) and Akbar Ali (father of Ayesha Devi). Out of the total capital of Rs.1,33,63,520/- of the company, the value of the shares held by Khadeeja Beevi and Akbar Ali were Rs.5,000/- each. The company was running a super speciality hospital in Thrissur Town in Central Kerala.

Earlier a partnership firm Mother Hospital had been constituted by Dr. M. Ali, Dr. Ayesha Beevi and their three children. 4.3 acres of land belonged to the firm. The purpose of the partnership firm was to run a super speciality

hospital and, accordingly, the firm started construction of the hospital building. Since it was felt expedient to form a private limited company to run and manage the hospital (then under construction), a company was formed for the said purpose and was incorporated on 30.12.1988. Thereafter, an agreement was entered into between the firm and the company by which it was agreed that the firm will complete the construction of the building and hand over possession of the same on completion, on the condition that the entire cost of construction of the building should be borne by the company. The relevant clause in the agreement reads:

> "The hospital building shall belong to the company on the company taking possession thereof; but however that the firm has and will have a lien on the hospital building and on any improvements or additions thereto until the money owing by the company to the firm by virtue of this agreement is fully paid off".

The company took possession of the building on its completion on 18.12.1991 and is running the hospital therein with effect from 19.12.1991. The accounts of the company have been debited with the cost of construction of the building, i.e., Rs. 1,37,83,149.83. The accounts of the firm have also been credited with the payments of Rs.1,06,78,456/- made by the company to the firm for completion of the construction. The balance amount payable by the company to the firm has been carried as the company's liability in its

Balance Sheet, for which the firm had a lien on the building. This

amount has also since been paid to the firm. The one time building tax payable by the owner of a building under the Kerala Building Tax Act was also paid by the company.

Since the ownership of the land had to remain with the firm, it was also agreed that the land would be given on lease by the firm to the company and agreement dated 01.02.1989 provided for the said contingency as well in clause 4(g) which reads as under:

> "(g) In consideration of the FIRM agreeing with the COMPANY to permit situation of the hospital building or any additions thereto belonging to the FIRM as aforesaid, the COMPANY shall pay to the FIRM a ground rent of Rs.100/- per month, but however that the liability to pay such ground rent shall be on and from the 1^{8t} day of April 93 only."

The first assessment year of the company was 1992-1993. The appellant-company filed its return for the said year in which it claimed depreciation on the building part of the said property under Section 32 of the Income Tax Act, on the ground that it had become the "owner of the company". The assessment officer, after construing the provisions of the aforesaid agreement came to the conclusion that the appellant-assessee had not become the owner of the property in question in the relevant assessment year and, therefore, rejected the claim of depreciation. Appeal preferred by the assessee-company before the Commissioner of Income Tax

(Appeals) met with the same fate. However, in further appeal before the Income Tax Appellate Tribunal (ITAT), the appellant

succeeded. This success, however, was proved to be only of temporary nature inasmuch as the appeal of the Revenue against the order of the ITAT filed under Section 260A of the Income Tax Act before the High Court was allowed setting aside the aforesaid order of ITAT.

The High Court has held that the assessee had not become the owner of the property in question in the relevant assessment year and clause 4(g) could not confer any ownership rights on the assessee.

We are in agreement with the view taken by the High Court. Building which was constructed by the firm belonged to the firm. Admittedly it is an immovable property. The title in the said immovable property cannot pass when its value is more than Rs.100/- unless it is executed on a proper stamp paper and is also duly registered with the sub-Registrar. Nothing of the sort took place. In the absence thereof, it could not be said that the assessee had become the owner of the property.

Before us another argument is raised by the learned counsel appearing for the appellant. It is submitted that having regard to clause 4(g), the appellant had become the lessee of the property in question and since the construction was made by the appellant from its funds, by virtue of

explanation (1) to Section 32 of the Income Tax Act, the assessee was, in any case, entitled to claim depreciation.

This explanation reads as under: "32

(1)

.....

Explanation 1. Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

As is clear from the plain language of the aforesaid explanation, it is only when the assessee holds a lease right or other right of occupancy and any capital expenditure is incurred by the assesee on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building and the expenditure on construction is incurred by the assessee, that assessee would be entitled to depreciation to the extent of any such expenditure incurred.

In the instant case, records show that the construction was made by the firm. It is a different thing that the assessee had reimbursed the amount. The construction was not carried out by the assessee himself. Therefore, the **explanation** also would not come to the aid of the assessee.

We, thus, do not find any merit in this appeal which is, accordingly, dismissed.

..... , J.
[A.K. SIKRI]

..... , J.
[ASHOK BHUSHAN]

New Delhi;
March 08, 2017.

ITEM NO.106 COURT NO.7 SECTION IIIA

S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

Civil Appeal No. 3360/2006

M/S.MOTHER HOSPITAL PVT. LTD. Appellant (s)

VERSUS

COMMISSIONER OF INCOME-TAX, TRICHUR Respondent(s)

(With appin. (s) for directions, c/delay in filing the spare copies, interim relief and office report)

Date : 08/03/2017 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)
Mr. Utkarsh Shrivastava, Adv.
Mr. R. Gopalakrishnan, Adv.

For Respondent(s)
Mr. Rana Mukherji, Sr. Adv.
Mr. S. A. Haseeb, Adv.
Ms. Rashmi Malhotra, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order. In view thereof, pending applications stand disposed of.

(Nidhi Ahuja) (Mala Kumari Sharma)
Court Master Court Master

[Signed order is placed on the file.]