IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
Income Tax Appeal No.567 of 2009
DATE OF DECISION : 4th February, 2010

Commissioner of Income Tax, Panchkula
...Appellant

Vs.

M/s Haryana Tourism Corporation Ltd.
...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present : Mr.Yogesh Putney, Advocate for the appellant

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1.To be referred to the reporters or not?
2.Whether the judgment should be reported in the Digest?

M.M.KUMAR,J.

The Revenue has approached this Court by filing the instant appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') challenging order dated 25.03.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for brevity 'the tribunal') in ITA No.1056/Chd/2008 in respect of assessment year 2005-06. The revenue has claimed that the following substantial questions of law would arise for determination of this Court :-

> "Whether on the facts and in the circumstances of the case, ld ITAT is right in law in holding that the rental income earned by the asseessee from the letting out of shops is assessable under the head 'income from House property' and not income from 'Profits and gains of business and professions'?
>
> "Whether the ld.ITAT was right in following its own judgment in the assessee's case for the assessment year 1997-98 ignoring the fresh facts brought on record by the Assessing Officer and by ignoring the ratio of the High

Court judgments relied upon by the Assessing Officer and by the Commissioner of Income Tax (Appeals).?

"Whether on the facts and in the circumstances of the case, the ld. ITAT is right in law the ld. ITAT is right in deleting the addition of Rs.1070351/- on account of breakage of crockery & cutlery ignoring the fact that the amount in question was in fact a provision and the claim of the assessee was on estimated basis and not on the basis of actual expenditure incurred'?

"Whether on the facts and circumstances of the case and in law, the assessee is entitled to double deduction on capital assets i.e. depreciation at the specified rate as well a provision claimed at 2% of food cost"?

A perusal of the order passed by the tribunal would show that assessee-respondent is a public sector undertaking engaged in the business of running of tourist complexes, hotels/motels/resorts. It has decaled rental income of Rs.1,16,50,981/- under the head income from house property after claiming deduction under Section 24 of the Act. It had claimed that similar deductions were made in the earlier years. An identical issue arose in the assessment years 1997-98, 1998-99 and 2002-03 and the tribunal had accepted such income as 'income from house property'. However, the assessing officer went into further details to record a contrary finding to the effect that the income derived by the assessee-respondent has been in the nature of business income. It is thus evident that an identical issue in respect of assessment year 1997-98 was decided in favour of the assessee-respondent. On an appeal filed by the revenue being ITA No.812/Chandi/2001 it was held by the tribunal that such income has

to be regarded as income from house property and accordingly the assessee was held entitled to the statutory deductions admissible under Section 24 of the Act. The aforesaid order of the tribunal has attained finality. The tribunal accordingly followed the principle of consistency by refusing to deviate from its earlier decision.

We are also of the view that the tribunal has not committed any error of law by granting deductions under Section 24 as the deduction is based on findings of facts that the income is derived from house property. Essentially it is a finding of fact and not a question of law which may warrant admission of the appeal. The principle of consistency laid down by Hon'ble the Supreme Court in the case of Berger Paints India Ltd. v. CIT(2004) 266 ITR 99, CIT v. J.K.Charitable Trust (2009) ISCC 196 and C.K.Gangadharan v. CIT (2008) SCC 739 would guide us that once similar proposition has been accepted by the revenue in respect of assessment year 1997-98, then it is not open to it to challenge a similar finding and deviate from its earlier stand. Therefore, question no.1 and 2 have to be answered against the revenue and in favour of the assessee-respondent.

In respect of question no.3 and 4, similar situation would emerge from a perusal of para 4 of the impugned order. The issue of deleting the amount on account of breakage of crockery has been considered. The contention of the assessee-respondent has prevailed because similar issue was raised before Delhi Bench of the Tribunal in ITA No.5651/Del./1997. The aforesaid view of Delhi Bench was followed by the Chandigarh Bench also in ITA Nos.825 and 875/Chandi/1999 in the case of Haryana Hotels Ltd. decided on 08.04.2004. Even in the case of assessee-respondent similar view has

been followed in ITA No.755/Chandi/2002. Accordingly, the aforesaid ground also would not stand scrutiny of the principle of consistency as laid down in various judgments referred in the preceding para. Therefore, question nos.3 and 4 would also deserve to be answered against the revenue-appellant and in favour of the assessee-respondent.

As a sequel to the above discussion, the appeal does not warrant admission and the same is accordingly dismissed.

(M.M.KUMAR)
JUDGE

(JITENDRA CHAUHAN)
JUDGE

February 04, 2010
p.singh