



2024/KER/34100

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

ITA NO. 7 OF 2023

APPELLANT

HOTEL ALLIED TRADES PVT. LTD
C/O CASINO HOTEL, WILLINGDON ISLAND, KOCHI PAN
AAACH 6770 P, PIN - 682682

BY ADVS.

ABRAHAM JOSEPH MARKOS

ISAAC THOMAS'

P.G.CHANDAPILLAI ABRAHAM

ALEXANDER JOSEPH MARKOS

SHARAD JOSEPH KODANTHARA

JOHN VITHAYATHIL

AIBEL MATHEW SIBY

RESPONDENT/RESPONDENT

THE ADDITIONAL COMMISSIONER OF INCOME-TAX
CIRCLE 1(2), KOCHI, PIN - 682018

OTHER PRESENT:

SC-JOSE JOSEPH

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION
ON 21.05.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**J U D G M E N T**

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Dated this the 21st day of May, 2024Dr. A.K.Jayasankaran Nambiar, J.

The appellant-M/s. Hotel & Allied Trades Pvt. Ltd. impugns the order dated 09.11.2022 of the Income Tax Tribunal that was passed in relation to the appellant for the assessment year 2009-10.

2. By the said order, the Appellate Tribunal had affirmed the order of the Assessing Authority as also the First Appellate Authority that disallowed a claim for an amount of Rs.101.87 lakhs as revenue expenditure since, according to the Assessing Authority and the First Appellate Authority, the expenditure that was incurred by the appellant/assessee by way of addition to buildings and electrical fittings on leasehold premises was in the nature of capital expenditure and not revenue expenditure. In the appeals before us, the appellant raises the following questions of law:



“a) Whether on the facts and in circumstances of the case the Tribunal is justified in confirming the disallowance of the claim for deduction of the cost of repairs and additions incurred on buildings in leasehold premises amounting to Rs.1,01,87,412/-?

b) Whether on the facts and in the circumstances of the case, there is any material or evidence on record to justify the finding of the Appellate Tribunal that the sum of Rs.1,01,87,412/- cannot be allowed as deduction for the assessment year in question?

3. We have heard Sri.Abraham Joseph Markos, the learned Counsel for the appellant and Sri.Jose Joseph, the learned Standing Counsel for the Income Tax Department.

4. The sole issue that arises for consideration is whether the claim by the appellant/assessee of an amount of Rs.101.87 lakhs as revenue expenditure is allowable or not. The Assessing Authority as also the First Appellate Authority while considering the claim of the appellant/assessee found that based on the description of the expenditure as given by the appellant/assessee, the expenditure was more in the nature of capital expenditure and not revenue expenditure and hence, the appellant could not



claim these expenses as revenue expenses for the assessment year in question. The alternate claim of the appellant/assessee to permit them to claim depreciation to the prescribed extent in respect of the said expenditure incurred by them was however allowed by the said authorities. In the further appeal carried by the appellant before the Income Tax Appellate Tribunal, the Appellate Tribunal found as follows in respect of the claim for revenue expenditure:

6. Disallowance of Current Repairs

6.1 The assessee claimed an amount of Rs.101.87 lakhs as revenue expenditure which is addition to building and electrical fittings on leasehold premises. The Ld. AO, invoking Explanation-1 to Sec.32(1) held that capital expenditure incurred on a leased building was to be capitalized and depreciation would be allowed. Therefore, the amount of Rs.101.87 lakhs was disallowed. The Ld. CIT(A) confirmed the same but directed the LD. AO to allow depreciation on capital component of expenditure. Aggrieved the assessee is in further appeal before us.

6.2. From the facts, it emerges that the assessee has incurred expenditure on existing building which is erected on leased land. This being so, Explanation-1 would apply since the nature of expenditure is capital expenditure. Therefore, the expenditure is to be capitalized and



depreciation would be allowable to the assessee. The Ld. AO is directed to allow depreciation on this expenditure. The assessee is directed to provide requisite details. This ground stand partly allowed.”

5. The learned Senior Counsel for the appellant would point out that the Appellate Tribunal merely went by the Explanation-1 to Section 32(1) of the Income Tax Act ('the IT Act for short) and presumed that the expenditure incurred by the appellant/assessee was capital expenditure incurred on a lease building which had to be capitalized and only depreciation would be allowed thereon. He takes us to the judgment dated 17.06.2016 of a Full Bench of this Court in ***Indus Motors Co.Pvt. Ltd. v. Deputy Commission of Income Tax [(2016) 382 ITR 503 (Ker)]***:(ITA No.14 of 2015) to point out that the provisions of Explanation-1 to Section 32(1) could not be mechanically applied to any claim made by an assessee in relation to an expenditure incurred on lease premises. The nature of the expense, whether capital or revenue, had to be first ascertained and it was only in circumstances where the expenditure was found to be a capital expenditure that the provisions of Explanation-1 to Section 32(1) of the IT Act could



be applied. It is the submission of the learned Senior Counsel that in the impugned order of the Tribunal, the Tribunal has mechanically applied the provisions of Explanation -1 to Section 32(1) of the IT Act to the case of the assessment and further, it does not specifically refer to the aforementioned decision of the Full Bench of this Court. He therefore prays for a remand of the case to the Tribunal for a fresh consideration of the issue.

6. *Per Contra*, Sri.Jose Joseph, the learned Standing Counsel for the Income Tax Department would point out that by the impugned order, the Tribunal has merely affirmed the orders of the Assessing Authority and the First Appellate Authority. The orders of the Assessing Authority and the First Appellate Authority clearly discuss the claim made by the assessee and find that, based on the description of the expenses as given by the assessee, the expenses had to be treated as capital expenditure and not revenue expenditure. He points out therefore that, the Tribunal had in fact endorsed the findings of the authorities below, on facts, as regards the nature of expenses incurred by the assessee and it did not mechanically apply the provisions of Explanation-1 to Section 32(1) of the IT Act.



7. On a consideration of the rival submissions, we find force in the submission of the learned Standing Counsel for the Income Tax Department for we find that the assessing authority and the First Appellate Authority have clearly relied on the written submissions given by the assessee to find that the nature of the expenses incurred by the assessee was capital in nature. We also find that neither in the grounds of appeal before the First Appellate Authority nor before the Tribunal was there any material produced by the assessee to show that the expenses incurred by them were revenue in nature. If the assessee had in fact a case that the expenditure incurred by it was revenue in nature, then it was for the assessee to produce materials that would clearly demonstrate that the expenditure was revenue in nature. This not having been done at any stage before the First Appellate Authority or the Appellate Tribunal, we see no reason to interfere with the impugned order of the Tribunal which merely endorses the views taken by the said authorities.

8. Before parting with this case, and taking note of the apprehension raised by the learned Senior Counsel, we reiterate that the applicability of Explanation -1 to Section 32(1) of the IT



Act has to follow an independent finding by the Assessing Authority on whether the expenditure incurred by an assessee is capital or revenue in nature. This is the ratio of the decision of the Full Bench of this Court in ***Indus Motors Co.P Ltd*** (supra) and it is binding on all the authorities under the IT Act.

In the result, we dismiss the IT Appeal by answering the questions of law raised therein against the assessee and in favour of the revenue.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR

JUDGE

Sd/-

SYAM KUMAR V.M.

JUDGE

smm

APPENDIX OF ITA 7/2023

PETITIONER ANNEXURES

Annexure A	STATEMENT OF EXPENDITURE
Annexure B	TRUE COPY OF ASSESSMENT ORDER DATED 14-12-2011 OF THE ADDITIONAL COMMISSIONER OF INCOME TAX, RANGE-1, KOCHI
Annexure C	TRUE COPY OF THE ORDER DATED 15.03.2017 OF THE COMMISSIONER OF INCOME TAX (APPEALS)-1, COCHIN
Annexure D	TRUE COPY OF THE SECOND APPEAL DATED 08.05.2017 FILED BY THE APPELLANT BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN.
Annexure E	CERTIFIED COPY OF THE ORDER DATED 09.11.2022 OF THE APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN IN ITA ITA NO. 187/COCH/2017 FOR ASSESSMENT YEAR 2009-10
Annexure F	TRUE COPY OF JUDGMENT DATED 18.05.2022 IN ITA 28 OF 2017 OF THIS HON'BLE COURT