

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

AND

THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).Nos.106, 167 & 168 of 2003

Commissioner of Income Tax
Tiruchirapalli.

Appellant in all the Appeals

Vs.

M/s. Sangu Chakra Hotels Pvt Ltd.
Trichy

Respondent in all the Appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 5.3.2003 in ITA Nos.765/Mds/1995 for the assessment year 1992-93 and the order dated 11.4.2002 in I.T.A.Nos.1959 & 1964/Mds/1995 for the assessment years 1990-91 and 1991-92 respectively against,

1. Income Tax Appeal No. 307/94 & 95/TRY dated 10/01/95 on the file of the Commissioner of Income Tax (Appeals) Madras-34 against PA.No/GIR/No c4-2086 dated 21/04/1994 on the file of the Deputy Commissioner of Income tax, Special Range, Tiruchirapalli (In TC.Nos 106/2003) and

2. Income Tax Appeal No. 78/93-94/Spl Range/TR1 dated 20/06/1995 on the file of the Commissioner of Income Tax (Appeals) Madras-34, against PAN /GIR.No.47-040-c4-2086 dated 236/02/1993 on the file of the Deputy Commissioner of Income Tax, Spl Range, Tiruchirapalli (in TC Nos 167 & 168/2003)

For Appellant : Mr.T.Ravi Kumar, Jr.S.C.

For Respondent : Mr.M.P.Senthil Kumar

For M/s. Philip George

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The tax case appeal Nos.167 and 168 of 2003 are directed against the order dated 11.4.2002 in I.T.A.Nos.1959 & 1969/Mds/1995 for the assessment years 1990-91 and 1991-92 respectively, on the file of the Income Tax

Appellate Tribunal, Madras. The tax case appeal No.106 of 2003 is directed against the order dated 5.3.2003 in ITA Nos.765/Mds/1995 for the assessment year 1992-93 on the file of the Income Tax Appellate Tribunal, Madras, following its earlier order dated 11.4.2002 referred to above. Hence, all the appeals were heard and disposed of together.

2.1. The revenue has preferred these appeals raising the following substantial question of law,

"Whether, in the facts and circumstances of the case, the Tribunal was justified in directing higher depreciation at 20% in respect of structures let out and structures used by employees for residence, over looking the fact that such structures are put non hotel use?"

under the common facts and circumstances of the case stated below.

2.2. The assessee company is running a hotel, viz. Sangu Chakra Hotel Pvt. Ltd at Trichy. While scrutinising its claim for the depreciation of its building for the assessment year 1990-91, the Assessing Officer, in his order dated 26.2.1993 found that part of the building is used for the residence of the employees and yet another part of the building is let out to bank and to some other shops for rent, viz. State Bank of India, M/s. Raj Antique, Rock Fort Emporium, Cottage Art Crafts, M/s.Beena Florists and Sita World Travels.

2.3. According to the Assessing Officer, the assessee company has a building asset, part of which was let out to tenants and the remaining part has been used for the purpose of hotel within the meaning of Rule 5 (1) of the Income Tax Rules (in short the "Rules") for Determination of income and Business Profits and Gains read with sub-clause 3 of Clause I of Appendix I. According to the Assessing Officer, the assessee would not be eligible for higher depreciation applicable to the hotel building, since a part of the building is used for non hotel purpose, in view of sub-clause 3 of Clause I of Appendix I read with Rule 5(1) of the Rules.

3. Before proceeding further, it is apt to refer Rule 5(1) of the Rules and Clause I of Appendix I which deals with the depreciation of the building.

4.1. Rule 5(1) of the Rules, (as it then was) reads as under:

5. Depreciation

(1) Subject to the provisions of sub-rule (2), the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the

previous year.

(2) ... "

4.2. Clause I of Appendix I, which deals with Table of rates at which depreciation is admissible, reads as under:

Block of Assets	Depreciation allowance as %age of written down value
I. BUILDINGS	
(1) Buildings other than those covered by sub-item (3) below which are used mainly for residential purposes	5
(2) Buildings which are not used mainly for residential purposes and which are not covered by sub-item (3) below	10
(3) (i) Buildings used as hotels }	20
(ii) Buildings with dwelling units each with plinth area not exceeding 80 square metres }	
(4) Purely temporary erections such as wooden structures	
...	

5.1. Even though the assessee claimed 20% depreciation of the entire building stating that the entire building is used as hotel, the Assessing officer, in his assessment order dated 26.2.1993, held that the assessee was using only 25% of the building for hotel purpose and therefore allowed 20% depreciation as per sub clause 3(i) of Clause I of Appendix I referred to above and for the balance 75% of the building, he allowed depreciation at 10% as they were neither used mainly for residential purpose nor used as hotel nor as dwelling units with plinth area not exceeding 80 square metres, applying sub-clause (ii) of Clause I of Appendix I of the Rules.

5.2. But, on appeal, at the instance of the assessee, the Commissioner, on facts, came to the conclusion that the provision for accommodation to the officers and staff of the hotel cannot be considered as non hotel purpose and that the maintenance of a bank, antique shop, emporium for arts and crafts are part and parcel of the hotel business and therefore, the assessee did not let out any portion of the building for anything not covered with this hotel business and accordingly, allowed 20% of depreciation for the whole building as per sub clause 3 of Clause 1 of Appendix I read with Rule 5(1) of the Rules and the same was confirmed on appeal, at the instance of the revenue, by order of the Tribunal under challenge. Hence, the present appeals raising the questions of law referred to above.

6.1. Mr.T. Ravi Kumar, learned Standing Counsel for the revenue assailing the order of the Commissioner, as confirmed by the Tribunal, contends that portion of the building used for accommodation purpose of the officers and staff of the hotel as well as the portion let out to the bank, antique shops, emporium, art and crafts, florists, travels are not directly connected with hotel business and the same was let out to third parties and therefore, the Assessing Officer is right in granting depreciation treating the said portion of the building referred for the above purpose as 25% of the building and allowing only 10% of depreciation applying sub clause 2 of Clause 1 of Appendix I read with Rule 5(1) of the Rules for the balance 75% of the building.

6.2. On the other hand, justifying the reasons and the findings rendered by the Commissioner and the Tribunal referred to above, the learned counsel for the respondent contends that the Commissioner had rightly granted 20% of depreciation to whole building.

7. We have given careful consideration to the submissions of both sides.

8.1. We have already referred to Rule 5 and Clause 1 of Appendix I which is relevant to decide the above substantial questions of law. Clause 2 of Appendix I deals with the buildings which are not used mainly for residential purpose and which are not covered by sub clause 3(i) viz. the buildings used as hotels and 3(ii) viz. the buildings with dwelling units each with plinth area not exceeding 80 square metres.

8.2. In other words, sub clause 1 of Clause I of Appendix I deals with the buildings used mainly for residential purpose. Sub clause 2 of Clause I of Appendix I deals with the building which are not used for mainly residential and which are not covered under sub clause 3. Sub clause 3 of Clause I of Appendix I deals with the buildings used as hotel as well as buildings with dwelling units each with plinth area not exceeding 80 square metres. In short, the buildings which are covered under sub Clause 1 excludes sub clause 2 and 3. Buildings mentioned in sub clause (2) excludes buildings mentioned in Sub Clause (3). Sub clause

3(i) deals with the buildings used as hotels which are eligible for 20% depreciation.

8.3. In the instant case, the assessee claims 20% of depreciation contending that the entire building is used as hotel. Under the Act and Rules read with Appendix, the hotel is not defined. Therefore, we are constrained to refer Dictionary to apply the meaning for the building used as hotel. The word "hotel" is explained in Encyclopaedia Britannica as

"Building that provides lodging, meals and other services to the travelling public on a commercial basis."

Similarly, the word "hotel" is described in Merriam Webster Online Dictionary as

"An establishment that provides lodging and usually meals and other services for travellers and other paying guests."

Likewise, in Stroud's Judicial Dictionary of Words and Phrases, the word "hotel" has been stated as

"An "hotel" is a place where lodgings are let and where provisions are, to some extent, supplied."

8.4. A full bench of the Apex Court, in N.I. CATERERS (INDIA) LTD. v. LT. GOVERNOR OF DELHI (42 STC 386) where the appellant ran a hotel in which lodging and meals provided on "inclusive terms" to residents, were served to non residents also in the restaurant located in the hotel, considered the question of law, viz. Whether the service of meals to casual visitors in the restaurant was taxable as a sale (i) when the charges were lump sum per meal or (ii) When they were calculated per dish, and held that service of meals to visitors in the restaurant of the appellant was not taxable under the Bengal Finance (Sales Tax) Act, 1941, because, the supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need, as the same is provided by way of hospitality, which determines the functional character of the hotel.

8.6. Likewise, the hotel not only provides the lodging facility or meals to the travellers and paying guests, but also other services, viz. the hotelier provides furniture and furnishings, linen, crockery and cutlery, in the eating places. The hotelier may add music, provide an area for floor dancing and in some cases, floor show, in addition to the supply of foods, drinks to the customers which all form part of other services to the travellers or paying guests or to any other travelling public. Of course, all are on commercial bases.

8.7. A traveller or a travelling public, of course, will have privilege to eat or not and similarly, to avail other facilities or not, which is entirely left to his need and desire. But, still it is left for the hotelier to maintain the hospitality whether its customer avails it or

not. Therefore, what is important is whether the hotelier, apart from lodging and boarding facility, also provides other services to the travellers, paying guests and other travelling public to maintain the functional character of the hotel, viz. the hospitality. It is immaterial in the course of such hospitality whether such services are used by the visitors to the hotel also.

8.8. An argument is also available for the revenue to say that these facilities like health clinic, gymnasium centre, swimming pool, music, floor dance, restaurant, bank, antiques, florists, emporium, arts and crafts, facility of travelling agency would also be incidental use by the casual visitors to the hotel. In our considered opinion, such usage by the casual visitors much less general public who do not avail the lodging facility in the hotel, even though is incidental, by itself will not take away their main functional character of the hotel, viz. hospitality, inasmuch as these services are to be roped in to the main purpose of the hospitality of the above hotel.

8.9. In the instant case, the provisions for accommodating the officers and staff of the hotel are, as rightly held by the Commissioner and Tribunal, deemed to be part and parcel of the functional character of the hotel, for the simple reason, when the facilities of the hotel could be utilised by the casual visitors to the hotel as an hospitality from the hotel, why could not such facility be extended to the officers, staff and employees of the hotel.

8.10. Similarly, letting out shops for antiques, emporium, arts and crafts, florists and travels, which are all intended as a part of service of the hospitality to the travellers, paying guests and other travelling public on commercial basis, shall have the same effect as that of providing facilities and services like restaurant, bar room, health clinic, gymnasium centre, swimming pool, music, floor dance etc. These services are not only intended to attract the customers as opined by the Commissioner, in our considered opinion, is a part and parcel of the hospitality of the hotel. Therefore, the entire building has to be treated as composite building and could not be segregated in any manner such as part of the building is used for hotel purpose and other part is used for accommodating the officers and staff of the hotel and housing the bank and shopping complex etc. and therefore, such portion is not entitled for exemption of 20% under sub clause 3(i) of Clause I of Appendix I.

8.11. In the result, the entire composite building is entitled for exemption of 20%, giving benefit under sub clause 3(i) of Clause I of Appendix I read with Rule 5 of the Rules.

The appeal is dismissed and the questions of law are answered against the revenue and in favour of the assessee.

kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
3rd Floor, Rajaji Bhavan, Besant Nagar,
Chennai-90.

2. The Commissioner of Income Tax,
Trichy

3. The Commissioner of Income Tax (Appeals)
Madras -34.

4. The Deputy commissioner of Income Tax,
Special Range, Tiruchirapalli.

+ One cc to MRS Pusya Sitaraman, SSC IT, SR 51312

+ One cc to Mr. Philip George, Advocate SR 50982

+ 3 CC to Mr. N.Muralikumaran SSC IT, SR 51641 to 51643

BK (co)
sg 03/01/07

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T.C. (A) Nos.106, 167 & 168 of 2003.

31.10.2006.

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