



% 23.07.2009

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Present: Mr. Sanjeev Sabharwal with Mr. M.P. Gupta and Mr. Arvind Kr. Verma, Advs. for the appellant.

+CM Appl. No. 8924/2009 (exemption)

Allowed, subject to just exceptions.

CM Appl. No. 8925/2009

For the reasons stated in this application, delay in refiling the appeal is condoned.

CM stands disposed of.

ITA No. 777/2009


The order passed by the Assessing Officer in respect of the assessment year 1999-2000 of the assessee making addition of Rs.11,52,055/- was deleted by the CIT(A), which order has been upheld by the ITAT observing as under:

"8.2 Assessee did not furnish any return of income. No books of accounts were also produced during the asstt. Proceedings. In the absence of return of income and the necessary details, the AO estimated income from hotel receipts at Rs.11,52,055/- as was so declared in the immediate proceedings asstt. Year. However, the CIT(A) has deleted the addition by observing that the AO has not been able to prove the existence of any income earned by the assessee in the asstt. Year under consideration in as much as the office of the assessee company was mostly closed during the period relevant to the asstt. Year 1999-2000, which is under consideration. After considering the totality of the facts and circumstances of the case and having regard to the fact that the assessee failed to furnish any return of income or failed to furnish any evidences before the AO that no business was actually carried out during the year under



consideration, the CIT (A) was unjustified in deleting whole of the addition made by the AO on account of income from hotel receipts. It is not in dispute that the assessee had shown receipt of Rs.11,52,055/- in that the hotel business was not in immediate preceding asstt. Year. It is not the case of the assessee that the hotel business was not in existence. No evidences have been produced to show that the hotel was closed down throughout the year. The assessee has not co-operated by giving details as to its business activities. Therefore, the AO was justified in estimating the income to be best of his judgment u/s 144 of the Act. The past record of the assessee is a relevant criteria on the basis of which the current year's income can be reasonably determined. In the immediate preceding year, the assessee had shown gross receipts of Rs.11,52,053/- against which certain expenses were claimed. The AO has taken the gross receipts as income without giving any deduction on account of expenses necessary to be incurred for carrying on the business activities. The AO was, therefore, unjustified in taking the income from hotel receipts at gross receipts of last year without considering the expenses. In the immediate preceding year, the income from hotel business was estimated by the AO at Rs.15,708/-. Taking this income assessed for the asstt. Year 1998-99 at Rs.15,708/- as base, we reasonably estimate the income from hotel resort at Rs.16,000/-. We, therefore, direct the AO to take the income from hotel at Rs.16,000/- while computing the assessee's total income liable to tax under the Income Tax Act. The order of CIT(A) is, thus, modified accordingly."

Therefore, no substantial question of law arises for our consideration. This appeal is, accordingly, dismissed.


A.K. SIKRI, J.


VALMIKI J. MEHTA, J.

July 23, 2009
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