



* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA No.886/2010

Commissioner of Income Tax Appellant

Through: Mrs. Prem Lata Bansal, Advocate

versus

Sahara India Savings & Investment Corpn. Ltd. Respondent

Through: None

ORDER

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19.07.2010

This is an appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') at the instance of the revenue assailing the order dated 21st September, 2007 passed by the Income Tax Appellate Tribunal (for short 'the tribunal') pertaining to the Assessment Year 1993-94.

2. In the memorandum of appeal the revenue has proposed the following substantial questions of law:

- (a) Whether ITAT was correct in law in allowing depreciation to the assessee on building transferred from account of M/s Aarohi Builder (P) Ltd.?



- (b) Whether ITAT was correct in law in upholding the order of CIT(A) and thereby allowing depreciation of Rs.24,73,867/- to the assessee?
- (c) Whether order passed by ITAT is perverse in law and on facts when the assessee was not the registered owner of the property?

3. On a perusal of the aforesaid questions of law and the synopsis that has been brought on record, it is clear as day that the revenue is affected by allowing the depreciation of Rs.24,73,867/-. The facts which are necessary to be stated in this regard are that during the assessment proceedings, on examination of the ledger account pertaining to the building account of M/s. Sahara India Tower and that of M/s Aarohi Builder (P) Ltd. from whom the building was purchased and it was found that balance standing against the building account as on 31.3.1993 was Rs.2,47,38,673/- in which cost of construction of Rs.2,44,59,490/- was transferred from the account of M/s Aarohi Builder (P) Ltd. on 16.3.1993. The assessing officer noticed that the building could not actually be acquired before 16.3.1993 when the full payment was made. The deed of purchase of the said property could not be produced by the assessee. The assessee furnished the copy of the agreement for sale of the said property dated 4.11.1991 and claimed that the property



was, in fact, in the possession of the assessee and hence, the assessee was entitled for depreciation for the full year. The assessing officer did not allow the depreciation on the said assessee and disallowed the claim of 10% amounting to Rs.24,73,867/-.

4. Being dissatisfied the assessee preferred an appeal before CIT(A) and the appellate authority took note of the fact that the assessee had taken possession of the property after executing the sale agreement on 4.11.1991 and had applied for no objection certificate before the authority which was allowed at the end of Assessment Year 1992-93. The appellate authority placed reliance on the decisions rendered in *Additional Commissioner of Income-Tax, Lucknow v. U.P. State Agro Industrial Corporation Ltd.* 127 ITR 97 (Alld.) and dislodged the order of the assessing officer and directed to allow the depreciation on the building as per rates applicable.

5. The aforesaid order was assailed by the revenue before the tribunal contending, inter alia, that the CIT(A) had accepted the additional evidence without affording any opportunity to the assessing officer.

6. The tribunal referred to the order of the CIT(A) and eventually came to hold as follows:

“11. The above finding of Id CIT(A) neither could be controverted by Id. Departmental Representative nor any



material was brought on record to controvert this finding. The Assessing Officer has disallowed the claim of the assessee on the reasoning that the amount of construction has been transferred from the account of M/s Arohi Builders (P) Ltd. on 16.03.1993 by which it was inferred by the Assessing Officer that the possession has not been taken by the assessee and therefore, the assessee is not entitled for depreciation. It is seen that the possession was not treated as taken on 4.11.1991 when the agreement entered because NOC could not be taken from the appropriate authority during this period. The NOC was given to the assessee on 24.3.1993. Accordingly, the assessee treated to have taken the possession only on 1.4.1992. Therefore, the depreciation was claimed from 1.4.1992 to 31.3.1993. The Hon'ble Supreme Court has settled the issue by which it has been held that it is not necessary to execute the registration of the property but what is necessary is that the possession must have been taken by the assessee. The agreement was entered on 4.11.1991. Thereafter, payments were made and constructed. The NOC was obtained. From all these facts it is clearly established that the assessee has already taken the possession and the asset was a business asset, used for business purpose. There is also no dispute whether depreciation is allowable or not because Assessing Officer himself has allowed the depreciation on the basis of WDV for the Assessment Year 94-95. Therefore, in view of all these facts and circumstances and in view of the reasoning given by CIT(A), we see no reason to interfere in the order of Id. CIT(A) and the order of CIT(A) is confirmed in this regard.”

7. On a perusal of the aforesaid reasoning, there can be no iota of doubt that the entire thing rests on facts inasmuch as there is no dispute that the agreement was entered on 4.11.1991 and NOC was obtained and possession



was taken over. Therefore, allowing the depreciation on the building, as claimed by the assessee, by the CIT(A) and concurrence with the same by the Tribunal cannot be faulted.

8. In the result, we do not perceive any substantial question of law being involved in this appeal and, accordingly, the same stands dismissed in limine.

Amish
CHIEF JUSTICE

Manmohan
MANMOHAN, J.

JULY 19, 2010
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