Cit Vs. Indo Continental Hotel and Resorts and Hotel Man Singh

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SooperKanoon Citation : sooperkanoon.com/772546

Court : Rajasthan

Decided On : Aug-08-2002

Reported in : [2002]125TAXMAN58(Raj)

Appeal No. : D.B. IT Reference No. 17 of 1997 8 August 2002

Appellant : Cit

Respondent : indo Continental Hotel and Resorts and Hotel Man Singh

Advocate for Pet/Ap. : J.K. Singhi and Anuroop Singhi, *for the Revenue*

Judgement :
ORDER

On an application filed under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the Appellate Tribunal, Jaipur, has referred the following question for our opinion :

'Whether, on the facts and circumstances of the case, the ITAT was right in treating the hotel building and various fittings and equipments installed therein as 'plant' for the purpose of allowing depreciation and investment allowance ?'

2. The assessee runs the Hotel Man Singh and claimed depreciation at the rate applicable in the case of 'plant' as the hotel building is a 'plant'. That has been negatived by the assessing officer. In appeals before the Commissioner (Appeals) and the Tribunal, Jaipur, the Commissioner (Appeals) as well as the Tribunal have

allowed the claim of the assessee and allowed the depreciation at the rate of 15 per cent treating the hotel building as a 'plant'.

3. None puts in appearance on behalf of the assessee.

4. The learned counsel for the revenue has brought to our notice the decision of the Apex Court in the case of CIT v. Anand Theatres : [2000]244ITR192(SC) , wherein their Lordships have taken the view that the theatre building and the hotel building specially designed or equipped for the purposes of business cannot be treated as a 'plant'. The learned counsel for the revenue also brought to our notice the decision in the case of Indian Hotels Co. Ltd. v. ITO : [2000]245ITR538(SC) wherein there Lordships have also considered and have taken the view that by manufacture or processing of food packets, the hotel cannot be called as an 'industrial undertaking'. Their Lordships negatived the claim holding that the assessee is not entitled for special deduction as manufacturer.

5. Following the view taken by their Lordships in the aforesaid cases, the assessee is neither entitled for depreciation on building at the rate which is applicable in the case of 'plant' and when the assessee is not a manufacturer as it does not manufacture article or things, it cannot be taken as an 'industrial undertaking'. Therefore, the assessee is not entitled to any investment allowance.

6. In the result, we answer the question in the negative, i.e., in favour of the revenue and against the assessee. The reference application stands disposed of accordingly.