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GA No. 2574 of 2016
In
ITAT No. 290 of 2016

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)

COMMISSIONER OF INCOME TAX - 1, KOLKATA
Versus
M/S. BENGAL INTELLIGENT PARKS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 10th May, 2018.

Mr. S.N.Dutta, Advocate appears.

Mr. J.P.Khaitan, Sr. Advocate appears.

The Court :- Though two questions have been raised by the department in this appeal, the emphasis is really on the first question as to whether the benefit of the foreign exchange fluctuation on account of the purchase of an imported lift ought to have been added to the income of the respondent assessee in the relevant year. The other question pertains to disallowance of interest under Section 14A of the Income Act, 1961. It appears to be a factual issue which was dealt with in great detail in the order impugned and no question of law arises therefrom.

The assessee constructs houses for the purpose of letting them out and the income is from the rental or lease income. In the context of how the assessee runs its business, the income is claimed as income from house property without the expenses for constructing the house being claimed by way of deduction or the individual items therefor being subjected to depreciation. In respect of a particular elevator imported by the assessee for installation at one of its buildings, the rise of the rupee compared to the relevant foreign currency resulted in the cost of the equipment being effectively lowered by a sum in excess of Rs. 6 lakh. The assessing officer added this to the income. In course of the appeal from the order of assessment, such aspect of the matter was not stressed upon by the assessee and a belated ground was sought to be incorporated. The Commissioner (Appeals) disregarded the ground by holding that the assessee had accepted the addition.

In course of the assessee's appeal before the Tribunal, the assessee asserted that since the elevator was not used for the purpose of its business and no deduction or depreciation or the like had been claimed in respect thereof, the perceived additional income on account of foreign exchange fluctuation could not be added back as an income in the hands of the assessee.

Section 43A of the Act deals with the variation of expenses on account of the change in the rate of exchange of currency. Such provision takes into account the additional expenses that may be incurred by an assessee as a result of the fluctuation of foreign exchange rates or the gain that may be made by an assessee on such account. However, such provision is confined to assets

acquired from a country outside India for the purpose of the assessee's business or profession. The appellate Tribunal held in this case that since the construction of the relevant house was not a part of the business of the assessee, Section 43A of the Act would not apply to the apparent gain made by the assessee as a consequence of the foreign exchange fluctuation.

On a plain reading of Section 43A of the Act and the fact that the assessee had not claimed any deduction or depreciation on account of the lift or other construction material, it cannot be said that the appellate Tribunal committed any error or that there is any significant question of law that needs to be looked into.

ITAT No. 290 of 2016 and GA No. 2574 of 2016 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)