IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Judgment Reserved On	Judgment Pronounced On
18.08.2020	04.09.2020

Tax Case Appeal Nos.467 & 470 of 2019

M/s.New Woodlands Hotel Pvt. Ltd.,
72-73, Dr.Radhakrishnan Road,
Mylapore, Chennai-600 034.
[PAN: AAACN 2043D] .. Appellant in both Appeals

-vs-

The Assistant Commissioner of Income Tax,
Company Circle-VI(2),
Chennai. .. Respondent in both Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the order dated 30.01.2019 made in I.T.A.Nos.2412& 2413/Chny/2017 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment years 2013-14 and 2014-15.

For Petitioner (In both Appeals) : Mr.G.Baskar

For Respondent (In both Appeals) : Mr.Rajesh, Junior Standing Counsel for Mr.Karthik Ranganathan, Senior Standing Counsel

COMMON JUDGMENT

T.S.Sivagnanam, J.

These appeals, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the assessee, a company in Hospitality Business, are directed against the common order dated 30.01.2019, passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai (for brevity "the Tribunal") in I.T.A.Nos.2412 & 2413/Chny/2017 for the assessment years 2013-14 and 2014-15.

2.There were two other appeals filed by the assessee against the very same order in T.C.A.Nos.468 and 469 of 2019 challenging that portion of the order passed by the Tribunal, which rejected the entire case of the assessee and allowed the Revenue's appeals on an issue, which was never canvassed

by the Revenue. These appeals were disposed of by order dated 16.03.2020 and in this judgment, we are concerned about the correctness of the order passed by the Tribunal in I.T.A.Nos.2412 & 2413/Chny/2017. The appeals are entertained on the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, order of the Income Tax Appellate Tribunal was perverse in concluding that the Appellant failed to lead any evidence to prove the claim;

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not allowing the genuine expenditure incurred by the Appellant as service charges to its employees in full; and

3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Commissioner of Income Tax (Appeals) had not examined whether the Service Charges

are really collected by the Appellant when such ground was not even raised before the Tribunal by the Appellant and also was not questioned by the Assessing Officer or the Commissioner of Income Tax in their orders."

3.Heard Mr.G.Baskar, learned counsel for the appellant/assessee and Mr.S.Rajesh, learned Junior Standing Counsel for Mr.Karthik Ranganathan, learned Senior Standing Counsel for the respondent/Revenue.

4.The assessee filed their return of income for the assessment years under consideration, viz., 2013-14 and 2014-15 on 27.09.2013 and 25.09.2014, respectively. For the assessment year 2013-14, the assessee admitted a total income of Rs.76,16,990/- and for the assessment year 2014-15, it admitted a loss of Rs.3,87,017/-. The returns were processed under Section 143(1) of the Act and subsequently, the assessments were selected for scrutiny and notices were issued under Section 142(1) of the Act on 08.06.2015/09.06.2016 calling for details. After the books of accounts were

produced by the assessee and information was furnished, the assessment was completed under Section 143(3) on 15.03.2016 by making an addition of Rs.2,16,80,648/- towards inflation of expenditure under the head "Service Charges" and addition of Rs.3,06,509/- towards interest on I.T. Refund for the assessment year 2013-14. The assessment for the year 2014-15 was completed under Section 143(3) of the Act on 30.09.2016 making an addition of Rs.2,03,68,410/- stating to be bogus expenditure claimed towards service charges and Rs.19,87,094/- towards employees contribution to Provident Fund and ESI remitted beyond the due date.

5.The assessee challenged the assessment orders before the Commissioner of Income Tax (Appeals) (CIT(A)), who by common order dated 26.07.2017, partly allowed the appeals by restricting the disallowance of service charges to Rs.1,22,70,445/- as against Rs.2,16,80,648/- and deleting the interest on I.T.Refund for the assessment year 2013-14 and restricting the disallowance of service charges to Rs.1,17,79,582/- as against

Rs.2,03,68,410/- and deleting the addition in respect of employees contribution to Provident Fund/ESI for the assessment year 2014-15. Against the said orders of CIT(A), the assessee and the Revenue preferred appeals to the Tribunal. The Tribunal, by the impugned order, dismissed the appeals filed by the assessee and allowed the appeals filed by the Revenue. Challenging the said order, the assessee is before this Court.

6.The question of law to be answered has a factual connotation to it with regard to the service charges paid by the assessee to its employees. The Tribunal held that the CIT(A) while partly allowing the assessee's appeals has not examined whether service charges were really collected by the assessee, nor any evidence was discussed in the orders in support of the claim for expenditure and therefore, held that the Assessing Officer was justified in drawing adverse inference on the claim and the CIT(A) ought not to have granted relief in the absence of any evidence in support of the claim. During the course of assessment, the Assessing Officer pointed out that the assessee has debited amount towards service charges. The assessee was called upon to

explain the same, who had stated that the service charges are paid in lieu of tips. Since the tips were received by the room boys only whereas, the other employees were not able to avail the same and ultimately, the matter was discussed with the employees and an agreement was entered into. The assessee furnished breakup of the service charges to the three category of employees, viz., permanent employees, managerial and other employees and administrative/temporary employees. The Assessing Officer examined a few of the employees of the assessee and also recorded statement after which, show cause notice dated 20.09.2016 was issued. The assessee submitted their reply dated 24.09.2016 giving additional details including the breakup of service charges, the Memorandum of Settlement arrived at between the assessee and the workers union dated 02.08.2012 and details of the columns and contents of the registers produced during the scrutiny proceedings. The Assessing Officer held that the assessee had resorted to this *modus operandi* for inflation expenditure by showing the same under the head "service charges" and the transaction was disbelieved.

7.When the matter was dealt with by the CIT(A), the factual position was reiterated, the documents, which were placed before the Assessing Officer including registers, were relied on. For the assessment year 2013-14, the assessee claimed that a sum of Rs.24,10,203/- was the amount of service charge collected during the year. Service charges paid to permanent employees through banking channel was Rs.55,45,911/-. The CIT(A), therefore, held that the possible service charge distributed among the temporary employees would be Rs.38,64,292/-. For the assessment year 2014-15, the total amount of service charge collected was Rs.85,88,828/-, paid to permanent employees through banking channel Rs.63,32,289/- and possible service charges distributed to temporary employees and others Rs.22,56,539. Thus, out of the total amount of service charges of Rs.1,61,34,737/- claimed by the assessee for the assessment year 2013-14, the CIT(A) accepted payment of Rs.38,64,292/- and disallowed Rs.1,22,70,445/-. For the assessment year 2014-15, the total amount of service charges claimed to have been paid is Rs.1,40,36,121/- of which, the CIT(A) granted relief to the extent of Rs.22,56,539/- and made disallowance of Rs.1,17,79,582/-. In

the opinion of the Tribunal, the orders of the CIT(A) were merely based on presumption that the assessee company would not have paid to the employees to the extent of service charges collected. There are two aspects to it. Firstly, whether the Assessing Officer was right in concluding that the assessee had adopted this modus operandi for inflating its expenditure. Under normal circumstances, the expression "modus operandi" is used when an assessee resorts to something which is illegal. Law recognises tax planning and penalizes tax avoiders.

8.Considering the material, which was placed by the assessee before the Assessing Officer, which was placed before the CIT(A), the Tribunal and before us, we are of the firm view that the Assessing Officer should not have used the expression "modus operandi" to mean that the assessee had adopted dubious tactics to inflate its expenditure. We have come to such conclusion because of the nature of material placed by the assessee before the Assessing Officer, CIT(A) and in the paper book filed before the Tribunal. The documents being, the annual accounts; the statement of income; copy of the

letter dated 23.08.2016 to the Assistant Commissioner of Income Tax enclosing the register of wages of persons employed (Form No.16 under Payment of Wages Act) for the relevant period evidencing payment of service charges to permanent employees; copies of vouchers for payment of service charges paid in cash to administrative/management/other employees; copy of service charges register for the relevant month evidencing payment to administrative/temporary employees; copy of the letter dated 09.05.2017 of the Chartered Accountant filed explaining the payment of service charges to the employees; and Memorandum of Settlement between the assessee and the Anna Thozhilalar Sangam dated 02.08.2012 under Section 18(1) of the Industrial Disputes Act, 1947.

9.The Assessing Officer while rejecting the assessee's contention has not disbelieved any of these documents. The payments effected in cash were sought to be substantiated by the assessee by producing vouchers. If the Assessing Officer was of the view that the vouchers are fabricated documents, then all of such employees should have been examined and statements should

have been recorded and if the same was done, the assessee is entitled to an opportunity of cross examination. This having not been done, the assessment order is flawed on this aspect. The Assessing Officer has referred to statements of four persons and on reading of selected portions of the statement, as extracted in the assessment order, does not lead to the inference that the entire transaction is bogus. The assessee's explanation is that tips were being given to the room boys and they alone were benefited and the other employees/workers raised objection and the matter was discussed in several meetings and ultimately, a settlement was arrived at between the employees union and the assessee management.

10.Due credence should be given to the Memorandum of Settlement dated 02.08.2012 recorded in the presence of the Labour Officer. If according to the Assessing Officer, this statement is also a bogus document, then he ought to have recorded such a finding. However, law prohibits him from doing so because of the binding effect of the settlement on the management and the workmen. Therefore, in our considered view, the settlement could not

have been brushed aside. The register of wages of persons employed is a statutory form under the Payment of Wages Act and there is a presumption to its validity. The bulk of the materials produced by the assessee before the Assessing Officer could not have been rejected. The CIT(A), though accepts the documents produced by the assessee, holds that there is no justification for payment in cash for temporary employees. In our view, this finding is not sufficient because vouchers have been produced, register has been produced, where the concerned temporary employees have signed. Therefore, to out rightly reject these vouchers and register, is incorrect. If according to the CIT(A), the vouchers and registers, insofar as temporary employees are concerned, are not admissible, then there should have been a finding to the said effect, which is conspicuously absent in the orders passed by the CIT(A).

11.The Tribunal erred in observing that the orders of the CIT(A) to the extent it grants relief to the assessee are on presumption. This finding is incorrect because the relief granted by the CIT(A) was in respect of payments, which were verifiable. It is not in dispute that the vouchers and registers were

produced before the Assessing Officer and the originals are also shown to have been produced at the time of assessment. The Assessing Officer merely going by statements of a few employees, cannot disbelieve statutory registers and forms, as there is a presumption to its validity and the onus is on the person, who disputes the validity or genuinity of the document. Therefore, in our considered view, the Tribunal ought not to have interfered with the relief granted by the CIT(A) and the CIT(A) ought to have interfered with the orders passed by the Assessing Officer in its entirety and not restricted the same to a partial relief.

12.In the result, the appeals are allowed and the substantial questions of law are answered in favour of the appellant-assessee. No costs.

(T.S.S., J.) (V.B.S., J.)
04.09.2020

abr

Speaking Order/Non-Speaking Order
Index :Yes/No

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

To

Income Tax Appellate Tribunal "B" Bench, Chennai.

Pre-delivery Judgment made in
Tax Case Appeal Nos.467 & 470 of 2019

04.09.2020