

(2012) 10 MAD CK 0226

In the Madras High Court

Case No : Tax Case (Appeal) No's. 2426 and 2427 of 2006

CIT

APPELLANT

Vs

Breeze Hotels (P.) Ltd.

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Expenditure Tax Act, 1987 — Section 11, 3, 3(1), 4, 5
Foreign Exchange Regulation Act, 1973 — Section 2

Citation : (2012) 10 MAD CK 0226

Hon'ble Judges : K. Ravichandra Baabu, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; Ashok Pathy, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ravichandra Baabu, J.—The Revenue is on appeal as against the order of the Tribunal in respect of the assessment years 1997-98 and 1998-99. The following are the substantial questions of law raised in common in both the appeals at the time of admission:

1. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee is not liable to Expenditure-tax Act for the assessment years 1997-98 and 1998-99?
2. Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that the assessee was not entitled to Expenditure-tax Act in spite of the fact that as per section 3, the tariff of the rooms exceeded the prescribed limit of Rs. 1,200?
3. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in interpreting the word "any" occurring in section 3 of the Expenditure-tax Act thereby making it unworkable, which is against the intention of the legislature?

The assessee company is engaged in the business of running hotel. On verification of the records filed by this assessee, it was noticed by the AO that the assessee's tariff rate exceeded the limit of Rs. 1,200. The details of tariff, as furnished by the assessee through their letter dated 22-2-1999 to the AO, are as follows:

Standard single

Rs. 1,000

Standard double

Rs. 1,250

Studio single

Rs. 1,150

Studio double

Rs. 1,400

Suite

Rs. 1,600

Special suite

Rs. 2,050

Consequently, the assessee was required to file a return of expenditure-tax for the concerned assessment year. Upon filing the return, the AO completed the assessment u/s 9 read with section 11 of the Expenditure-tax Act, 1987 and thereby worked out the entire expenditures under the following heads for the purpose of levy of expenditure-tax:

Assessment year 1997-98

Assessment year 1998-99 Room rent Rs. 2,97,52,445

Food and beverages Rs. 3,81,36,769 Liquor sales Rs. 99,99,716

Service charges Rs. 7,56,110

2. The AO while arriving at such conclusion also noticed that the assessee has not furnished any break up details of chargeable expenditure out of the total expenditure met out by them. Therefore, the AO proceeded to complete the assessment on the basis of data available on record. The assessee preferred an appeal before the CIT(A), who in turn agreed with the AO and dismissed the appeal. The first appellate authority, while dismissing the appeal, has found that as the assessee's tariff rate was found to be more than Rs. 1,200 even after considering the composite charges etc., the assessee's case was covered under the provisions of the Expenditure-tax Act, 1987. As against the said order,

further appeal was preferred by the assessee before the Tribunal.

3. It was contended by the assessee before the Tribunal that under the provisions of section 3 of the Expenditure-tax Act, 1987, the expression "any unit of residential accommodation" should be taken to mean "all residential units of accommodation". By contending so, and in support of the same, the assessee relied on the decision of the Kerala High Court in Commissioner of Income Tax Vs. Abad Hotels India (P) Ltd.,

4. The Tribunal after discussing with regard to the meaning of the word "any" and by following the decision of the Kerala High Court in CIT v. Abad Hotels India (P) Ltd. (supra), allowed the appeal by observing that the word any cannot mean some but it means all and therefore the assessee's case would not fall within the provisions of the said Act. Aggrieved against the said order of the Tribunal, the Revenue is before us.

5. According to the learned counsel for the Revenue, the word any found in the phrase "any unit of residential accommodation" means all or every as well as some or one and its meaning should depend upon the context and the subject-matter of the statute in which it is placed. In support of the said submission, he relied on the decision of the Himachal Pradesh High Court in H.P. Tourism Development Corporation Vs. Union of India (UOI) and Others, He further placed his reliance on the decision of the Apex Court in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, in support of his contention that the word any indicates the meaning all or every as well as some or one depending upon the context and the subject-matter of the statute. Therefore, the learned counsel appearing for the Revenue contended that the assessee is liable under the Expenditure-tax Act as admittedly the assessee's tariff rate exceeded the limit of Rs. 1,200 as contemplated u/s 3 of the said Act.

6. Per contra, learned counsel appearing for the assessee contended that the assessee is not liable under the Expenditure-tax Act as the word any found in section 3 should mean all and not one unit. The learned counsel for the assessee has once again relied on the decision of the Kerala High Court in CIT v. Abad Hotels India (P) Ltd. (supra).

7. Heard the learned counsel appearing for the respective parties and perused the orders of the authorities below.

8. The core issue in this tax case appeal is with regard to the question of applicability of the Expenditure-tax Act, 1987 on the assessee and if it is applicable, to what extent the assessee is liable to pay the same. The following are the relevant provisions of the Expenditure-tax Act, 1987 which are applicable to the facts of this case:

3. Application of the Act--This Act shall apply in relation to any chargeable expenditure--

(1) incurred in a hotel wherein the room charges for any unit of residential

accommodation at the time of incurring of such expenditure are one thousand two hundred rupees or more per day per individual and where....

5. Meaning of chargeable expenditure--For the purposes of this Act, chargeable expenditure-

(1) in relation to a hotel referred to in clause (1) of section 3, means any expenditure incurred in, or payments made to, the hotel in connection with the provision of-

(a) any accommodation, residential or otherwise; or

(b) food or drink by the hotel, whether at the hotel or outside, or by any other person at the hotel; or

(c) any accommodation in such hotel on hire or lease; or

(d) any other services at the hotel, either by the hotel or by any other person, by way of beauty parlour, health club, swimming pool or other services,

but does not include--

(i) any expenditure which is incurred, or payment for which is made, in foreign exchange before the 1-10-1992;

(ii) any expenditure incurred by persons within the purview of the Vienna Convention on Diplomatic Relations, 1961 or the Vienna Convention on Consular Relations, 1963;

(iii) any expenditure incurred in any shop or in any office which is not owned or managed by the person who carries on the business of a hotel;

(iv) any expenditure by way of any tax, including tax under this Act.

Explanation: For the purposes of this clause,--

(a) expenditure incurred or any payments made in Indian currency obtained by conversion of foreign exchange into Indian currency shall in such cases and in such circumstances as may be prescribed be deemed to have been incurred or, as the case may be, made in foreign exchange; and

(b) "foreign exchange" and "Indian currency" shall have the meanings respectively assigned to them in clause (h) and (k) of section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(2) in relation to a restaurant referred to in clause (2) of section 3, means any expenditure incurred in, or payments made to, a restaurant in connection with the provision of food or drink by the restaurant, whether at the restaurant or outside, or by any other person in the restaurant, but does not include any expenditure referred to in sub-clause (ii) and (iv) of clause(1).

9. Section 3 of the said Act contemplates the applicability of the Act in respect of

a hotel where the room charges for any unit of residential accommodation at the time of incurring of such expenditure are one thousand two hundred rupees or more per day per individual. Therefore, what is to be seen is as to whether the expression occurring u/s 3 viz., "any unit of residential accommodation" is to be construed as "all the units of residential accommodation" of the hotel or "any one" of the same. In this connection, two contra views, one expressed by the Kerala High Court and the other expressed by the Himachal Pradesh High Court in the decisions in CIT v. Abad Hotels India (P) Ltd. (supra) and H.P. Tourism Development Corporation v. Union of India & Ors. (supra) respectively, are placed before us.

10. We have gone through the decisions of both the High Courts and on careful analysis of the same, we are in respectful agreement with the view expressed by the Division Bench of the Himachal Pradesh High Court in the decision in H.P. Tourism Development Corporation v. Union of India & Ors. (supra). In the said decision the Himachal Pradesh High Court has considered the issue as to whether the provisions of the Expenditure-tax Act are attracted in the case of expenditure in a hotel wherein the room charges for any one room are Rs. 400 or Rs. 1,200 as the case may be or more per day per individual or that it is only when the room charges for all and each and every one of the rooms are Rs. 400 or Rs. 1,200 as the case may be or more per day per individual or that it should be with reference to persons occupying the room priced or with a tariff of Rs. 400 or Rs. 1,200 as the case may be or more per day per individual.

11. After considering the various contentions made by the respective parties therein the Himachal Pradesh High Court observed that the object of the Act as disclosed from the Preamble is to provide for the levy of a tax "on expenditure incurred in certain hotels or restaurants" and the charge is of a percentage stipulated from time to time of the chargeable expenditure incurred in a hotel referred to in section 3(1) of the Act, and the quantum of chargeable expenditure has to be determined in accordance with section 5 of the Act. It is also observed therein that the charge is thus on the expenditure incurred and the object of levy is as also the incidence of the tax falls only upon the person incurring such expenditure.

12. After noticing the different stands taken by the assessee and the Department while interpreting the word "any" in their own way either to escape from the liability or to bring within the purview of the Act respectively, the Himachal Pradesh High Court pointed out that the extreme stands taken by both the parties, if accepted, would result in not only counter-productive results but defeat the very efficacy of law and render it easily violable besides leading to absurdities in the matter of enforcement of a taxing enactment. In that case, the assessee had taken a stand that the words "any unit" are to be construed to mean all units or residential accommodation or rooms in a hotel to be of the minimum room charges specified in section 3 of the Act as a condition precedent for the very applicability of the Act to the expenditure incurred by a customer in

a hotel and the Departments stand is that any unit shall be construed to mean even one out of many.

13. It is further observed therein that when the language used is possible of bearing more than one construction, the one which results in hardship, serious inconvenience, injustice and absurdity has to be rejected and construction which would avoid such results should always be preferred. Thus, the Himachal Pradesh High Court has found that the word any is to have a diversity of meaning and employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends invariably upon the context of the subject-matter of the statute. It is also pointed out by the Himachal Pradesh High Court that if the contention of the Revenue is to be taken that the words "any unit" are to be construed as any one out of many, it will not only lead to absurdities but (will) also result in unjust results opposed to the very object of the Act and in a sense even defeating the purpose and aim of the Act, which has already been upheld by the Apex Court.

14. Likewise, the other extreme stand taken by the assessee was also found by the Himachal Pradesh High Court to result in absurd consequences and make the law easily capable of violation by a mere manipulation of having one or two or negligible number of rooms in a star category hotel with the room tariff below the minimum prescribed rate. Consequently, the Himachal Pradesh High Court at the penultimate paras has observed as follows:

24. Having regard to the serious and basic infirmities involved, in accepting either one or the other of the constructions, advanced to be placed on section 3 of the Act, we are obliged to have a construction, which would eliminate, and avoid such infirmities and unjust consequences, while at the same time making the law work effectively and enforced for achieving the avowed object of the legislation, making it also thereby beyond the reach of an individual to easily and successfully, by his own manipulation flout the same and evade liability under the Act. Such absurdities and unjust results and consequences could be safely averted, in our view, without defeating the objectives of the legislature by construing section 3 in such a manner as to make the Act and levy imposed by the Act to apply only to all chargeable expenditures incurred in or payments made by a person to a hotel in respect of any accommodation residential or otherwise of which the room charges for any unit of residential accommodation are four hundred rupees or above or one thousand two hundred rupees or above, as the case may be, for the relevant period of assessment under consideration and all other charges incurred in or payments made by such person for the provision of any or all such services, amenities and supplies effected as enumerated u/s 5 of the Act.....

To put it more specifically, if the standards or quality of services in a hotel are meant to satisfy or cater to the needs of an ordinary common person in hotelier parlance, called Janata type or class or category, merely because a hotel has chosen to have one or more of its rooms or unit of residential accommodation

with tariff/charges at or above the minimum rate specified in section 3 of the Act, all others who avail of the services therein of such ordinary and normal standard of services cannot and need not be allowed to be penalised with such a levy as the expenditure-tax, with its avowed purpose of curbing only lavish, affluent and ostentatious expenditure. The words "at the time of incurring of such expenditure", also have in our view, relevance and make it relatable to only the person in occupation of such rooms as stipulated in section 3 of the Act.....

Therefore, in our view, the Act though should be applicable to all hotels wherein the room charges for any unit of residential accommodation, at the time of incurring of such expenditure, are four hundred rupees or more or one thousand two hundred rupees or more, per day per individual, as the case may be, for the relevant period under consideration, since the charge is levied upon and tax is payable by the customer who avails of any of the services enumerated in section 5 of the Act, it is the expenditure incurred by such person who occupies and the expenditure incurred during such time for all or any of the services rendered and which are enumerated in section 5 that alone would constitute chargeable expenditure and it is only in respect of such chargeable expenditure, the assessee under the Act becomes responsible to collect the expenditure-tax at the rates specified in section 4 of the Act and remit the same in terms of the obligations cast upon him u/s 8 of the Act....

15. On considering the various reasonings given and as noted above, we are in respectful agreement with the findings rendered by the Himachal Pradesh High Court on the issue. No doubt, the Kerala High Court in the decision in CIT v. Abad Hotels India (P) Ltd. (supra) has given a contra view by holding that the word "any" occurring in s. 3 cannot be restricted to one unit of residential accommodation and on the other hand, it means all the units of accommodation. We are unable to agree with this view. At this juncture, it is useful to refer to the decision of the Supreme Court in Shri Balaganesan Metals v. M.N. Shanmugham Chetty & Ors. (supra) referred to by the Revenue wherein the Apex Court has considered the meaning of the word "any" and found that the word "any" indicates all or every as well as some or one depending upon the context and the subject-matter of the statute.

16. No doubt, the word "any" is capable of having more than one meaning but that will not prevent the Courts from making an endeavour to place the correct and true meaning with due regard to the consequences resulting in hardship, injustice and absurdity. A construction should always be made to achieve the object of the enactment rather than to defeat the same. Therefore, we hold that the word "any" occurring in section 3 of the Expenditure-tax Act does not mean "all" alone but on the other hand it means "all" or "every" as well as "some" or "one". Thus, by applying the above principle and by applying the well reasoned decision of the Himachal Pradesh High Court in H.P. Tourism Development Corporation v. Union of India & Ors. (supra), we have no hesitation in holding that the assessee is liable for levy of tax under the Expenditure-tax Act 1987 as

admittedly the assessee's tariff rate exceeded the limit of Rs. 1,200. However, though the assessee is held to be liable, that would not be taken to mean that the entire expenditure of the assessee as found by the assessing authority should be brought to tax. Since the tax is payable by the customers who avail any of the services enumerated u/s 5 of the Act, it is such expenditure incurred by such person who occupies and the expenditure incurred during such time for all or any of the services rendered alone would constitute chargeable expenditure and the assessee becomes liable for the same under Expenditure-tax Act. Accordingly, the assessment order made by the AO bringing the entire expenditure liable for expenditure-tax is held as not correct.

17. As it is pointed out by the AO that no break-up details of chargeable expenditure were given by the assessee and consequently he proceeded to complete the assessment based on the data available on record, in fairness to the claim of both sides, we feel the proper course herein would be to set aside the order and remit the matter back to the AO for the purpose of conducting an enquiry to find out the actual expenditure, which could be made liable to expenditure tax, as discussed supra.

18. In the result, we respectfully agree with the view expressed by the Division Bench of the Himachal Pradesh High Court in *H.P. Tourism Development Corporation v. UOI & Ors.* (supra) and in that, we express our disagreement with the view expressed by the Kerala High Court in its decision in *CIT v. Abad Hotels India (P) Ltd.* (supra) for the reasons discussed above. In the circumstances, the order of the Tribunal is set aside and consequently the assessment too. In turn, the assessment is restored to the file of the AO for the purpose of conducting an enquiry as to the number of rooms which are given for accommodation on the charges exceeding the chargeable limit as provided for u/s 3 and for making the assessment accordingly in terms of the law declared by the Himachal Pradesh High Court in *H.P. Tourism Development Corporation v. Union of India & Ors.* (supra), referred to above, with which we had expressed our agreement. The assessee is directed to produce the records pertaining to the accommodation and the charges collected and extend its co-operation in finalising the assessment. The tax case (appeals) are disposed of accordingly by answering the questions of law in favour of the Revenue. No costs.