Commissioner of Income Tax Vs Abad Hotels India (P) Ltd.

Income Tax R. No''s. 229 and 230 of 1999

Court: High Court Of Kerala

Date of Decision: Oct. 5, 2004

Acts Referred:

Kerala Expenditure Tax Act, 1987 â€" Section 3, 3(1)

Citation: (2005) 193 CTR 408 : (2005) 272 ITR 331 : (2004) 3 KLT 804

Hon'ble Judges: S. Sankarasubban, J; A.K. Basheer, J

Bench: Division Bench

Advocate: P.K. Raveendranatha Menon and George K. George, for the Appellant; P. Balachandran, for the Respondent

Judgement

S. Sankarasubban, J.
Reference in the above case are as follows:

1. Whether, on the facts and in the circumstances of the case, is not the assessee exigible to Expenditure Tax Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the Expenditure Tax Act would apply only

to the category of hotels identified by a bench mark of a minimum rent of above Rs. 400/- for any type of accommodation?

2. Assessee is a private limited Company running a hotel by name ""Abad Plaza"". For the assessment years 1989-90 and 1990-91, the Assessing

Officer held that the assessee was liable to tax under the Expenditure Tax Act in view of the rent charges for the hotel rooms exceeding the limit

prescribed u/s 3 of the Expenditure Tax Act. The Assessing Officer noticed that in respect of Suite No. 501 rent charged by the hotel was Rs.

700/- per day. Expenditure tax was accordingly levied on the entire hotel receipts collected by the assessee during the previous years relevant for

the assessment years 1989-90 and 1990-91.

3. The assessee filed appeals and the CIT (Appeals) held that expenditure tax was not leviable as there was only one unit of residential

accommodation with rent charges above Rs. 400/- per day. The CIT (Appeals) further held that even if there could be levy of expenditure tax, it

should be limited to the chargeable expenditure incurred in respect of Suite 501 only when it was let out on single occupancy basis. The Appellate

Authority found that the decision taken by the Tribunal in the case of M/s. International Hotel squarely applied to the facts of the case. The

Revenue took up the matter before the Tribunal. The Tribunal also dismissed the appeal. It is in the above background that these references have

been made.

4. The expenditure tax is a tax imposed on chargeable expenditure incurred in a hotel wherein, the room charges for any unit or residential

accommodation at the time of incurring of such expenditure are Rs. 400/- or more per day per individual. The Revenue submits that the words

any unit of residential accommodation"" means if one room is given on rent for Rs. 400/- or higher then the chargeable expenditure tax in that hotel

is liable to be taxed under the Expenditure Tax Act. On the other hand, learned counsel for the assessee submitted that it was not legal to tax all the

inmates of a hotel, because one of the rooms is let out for Rs. 400/-. Learned counsel for the Revenue would contend that the words ""any unit of

residential accommodation"" means even a single room. Learned counsel for the assessee submits that the word ""any"" means all.

5. Learned counsel for the Revenue brought to our notice the speech made by the Finance Minister at the time of introduction of Expenditure Tax

Act. Learned counsel referred to 165 ITR, Statute page 13, where in paragraph 73 the Hon''ble Minister speaks about the introduction of the

Expenditure Tax Act. It is stated as follows:

Those who can afford to patronize high class hotels should also be afforded the further pleasure of contributing to the national exchequer. A

separate legislation will be brought forward for levy of a tax on expenditure in expensive hotels. This tax, to be levied at 10% of expenditure, will

not apply to payments made in foreign exchange. It will become effective after passage of the necessary legislation"".

6. Learned counsel for the Revenue then brought to out notice the decision reported in Kerala State Industrial Development Corpn. Ltd. Vs.

Commissioner of Income Tax, , wherein the Supreme Court held thus:

''The Finance Minister''s speech before Parliament can be relied upon to throw light on the object and purpose of the particular provisions

introduced by the Finance Bill"". He also brought to our notice the decision reported in Federation of Hotel and Restaurant Association of India,

etc., Vs. Union of India (UOI) and Others, , wherein the validity of the Expenditure Tax Act has been considered and held to be valid. According

to us the interpretation to be given to the word ""any"" has to be given after looking into the purpose of the Act. It has been held that the word ""any

can mean one or many depending upon the circumstances in which it is put.

7. In ""The Law Lexicon"", the meaning of the word ""any"" is stated as follows: ""It is no doubt true that the word ""any"" may in certain context imply

all"". For example, when the law provides to the effect that any of a particular class of persons, such as the share-holders of a company or

Directors thereof, may be prosecuted for a particular offence which may be committed in connection with the conduct of the business of the

company, the use of the word ""any"" in such a context would imply that all persons, that is, all the share-holders or Directors, as the case may be,

prosecuted for the offence in question""; In Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, , the Supreme Court held as

follows:

The word ""any"" has the following meaning: some: one of many; an indefinite number. One indiscriminately of whatever kind or quantity. Word

any"" had a diversity of meaning and may be employed to indicate ""all"" or ""every"" as well as ""some"" or ""one"" and its meaning in a given statute

depends upon the context and the subject matter of the statute. It is often synonymous with ""either"", ""every"" or ""all"". Its generality may be restricted

by the context"".

8. Judged in the above view, according to us, the word ""any"" occurring in Section 3 of the Expenditure Tax Act cannot be restricted to one unit of

residential accommodation. If we restrict to one, it will mean that all the persons, who are accommodated in a hotel of which one room is rented

out for Rs. 400/- per day, then all the inmates are liable to pay expenditure tax. According to us, it is not the intention of the Statute. The words

any unit of residential accommodation"" means all the units of accommodation. According to us, this interpretation will be in tune with the intention

of the legislation.

In the above view of the matter, we agree with the Tribunal and we answer question Nos. 1 and 2 in favour of the assessee and against the

Revenue. ITR is disposed of.