

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 11th March, 2016

Judgment Delivered on: 10th May 2016

+ **ITA 623/2015 & CM No. 16086/2015**

COMMISSIONER OF INCOME TAX, DELHI-7 Appellant

versus

DLF HILTON HOTELS Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ashok K. Manchanda, Sr. Standing Counsel for ITD

For the Respondent : Ms Kavita Jha and Ms Mehak Gupta, Advocates

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

SANJEEV SACHDEVA, J

1. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the Act) impugns the order dated 22.08.2014 passed by the Income-Tax Appellate Tribunal (hereinafter referred to as the Tribunal) confirming the order dated 26.10.2012 passed by the Commissioner of Income Tax (Appeals) {hereinafter referred to as the CIT(A)} whereby the assessment made by the Assessing Officer (AO) disallowing expenditure and depreciation to

the tune of Rs. 1,30,01,214/- was deleted and further deleting the addition of Rs. 1,27,21,738/- made by the AO.

2. The assessment year in issue is 2008-09.

3. The appellant contends that the following substantial questions of law arise in the appeal:-

A. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in dismissing the appeal of the Revenue and deleting the addition of Rs. 1,30,01,214/- made by the AO on account of disallowance of miscellaneous expenses and depreciation as the same do not relate to the business of the assessee?*

B. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in dismissing the appeal of the Revenue and deleting the addition of Rs. 1,27,21,738/- made by the AO on account of disallowance of interest income accrued on time deposits?*

4. With regard to question – A i.e., disallowance of Rs. 1,30,01,214/- made by the AO, it may be noted that the AO had made the disallowance on the basis that the assessee was not doing any business activity but acting as a real estate developer. The expenses claimed debited to its profit and loss account were held to be not related to its day-to-day business activities.

5. The CIT(A) noted that the assessee was engaged in the business of providing and running of hospitality services. During the relevant financial year, the assessee had provided project management services to DLF Ltd. and earned income of Rs. 29,53,775/-. The CIT(A) noted that the assessee company was engaged in rendering professional services for advising and assisting in implementation of administrative and technical, financial, costing, cost control, fiscal, taxation, personnel, marketing and solving general management problems related to Hotel and food entrepreneurs. It was noted that the assessee had rendered services in the hospitality line and earned the income. However, the expenses incurred on running the hospitality business exceeded the receipts. The assessee had maintained a pool of staff/personnel for providing such services and maintained infrastructure for that. In support of the expenditure, the assessee filed copy of accounts of expenses incurred on hiring cars, rent paid, hiring personnel, furniture & fixtures, recruitment & training, miscellaneous expense, repair and maintenance, brokerage and commission etc. The CIT(A) noted from the accounts that full narration of the expenses was given date wise and person wise.

6. The CIT(A) held that it reasonably established that these expenses had been incurred by the assessee for running its business and further noted that these expenses were necessary for running any

business establishment and in the absence of these expenses an establishment could not be run. The AO had disallowed 50% of the expenditure and depreciation of the assets related to business but had not held that the balance expenditure was not genuine. The CIT(A) held that the disallowance of 50% of the expenditure was not based on any scientific method or any specific defects were pointed out in the books of account. The disallowance of 50% of the expenditure and depreciation was held to be unjustified. The disallowance was accordingly deleted. The Tribunal has affirmed the finding of the CIT(A).

7. We find that the findings returned by the CIT(A) are purely factual in nature. The CIT(A) has examined the record and the accounts produced by the assessee and after scrutiny of the same returned findings of fact that the expenditure was justified. No rationale has been given by the AO for disallowing 50% of the expenses incurred. Neither is there a finding that the expenditure is not genuine nor have the books of accounts been rejected by the AO. There is no perversity in the findings of fact returned by the CIT(A) and affirmed by the Tribunal.

8. With regard to the question – B, i.e., deletion of the addition of Rs. 1,27,21,738/- on account of interest income accrued on time deposits, the AO held that the interest income of Rs. 6,22,35,272/- had

accrued to the assessee out of which only Rs. 4,95,13,545/- had been offered to tax and Rs. 1,27,21,738/- had not been offered to tax. Therefore, the aforesaid amount of Rs. 1,27,21,738/- was added by the AO as undisclosed income of the assessee.

9. The CIT(A) noted that the interest on time deposits shown by the assessee in the accounts on accrual basis was for the purpose of closing of quarterly results. The accrual entries made in the accounts were subsequently reversed and the actual interest income earned by the assessee was duly accounted for. It is noted that the entries totalling to Rs. 1,27,21,738/- were memorandum entries and had no relation with the actual interest earned. The CIT(A) held that there was no suppression of income accrued on the fixed deposits (FDs) and the entire income received had been offered to tax. The addition of Rs. 1,27,21,738/- was accordingly deleted. The Tribunal has confirmed the order passed by the CIT(A).

10. The statement of account as filed before the Tax Authorities were also produced before us. Perusal of the same shows that the interest income of Rs. 1,27,21,738/- in issue relates to the FDs with Citi Bank Ltd. and not with ICICI Bank as recorded by the CIT(A) as well as the Tribunal. The statement of account shows that two types of credit entries have been made. One is with regard to the credit of the amount with the voucher type shown as 'bank receipts' and the other

is shown with voucher type as 'Journal'. It is contended by the counsel for the respondent that the 'Journal' entries were made in the account as a memorandum of the accrual of interest on quarterly basis for the purpose of closing of quarterly results and on receipt of the actual interest from the bank, the interest amount was credited to the account and the journal entry was reversed. Corresponding debit entries with voucher type 'Journal' also appear in the account statement. The six credit 'Journal' entries as tabulated below had been made in the accounts:

Date	Particulars	Vch. Type	Vch. No.	Debit	Credit
9/21/2007	Interest accrued on Time Deposits	Journal	568		Rs. 14,01,704.00
	Being interest accrued on time deposits upto 21.09.2007 as per the FD Details attached				
9/28/2007	Interest accrued on Time Deposits	Journal	623		Rs. 16,78,452.00
	Being interest accrued on time deposits upto 30.09.2007 as per the FD Details attached				
11/30/2007	Interest accrued on Time Deposits	Journal	898		Rs. 24,62,284.00
	Being interest accrued on time deposits upto 30.11.2007 as per the FD Details attached				
12/20/2007	Interest accrued on Time Deposits	Journal	1007		Rs. 21,13,817.00
	Being interest accrued on time deposits upto 20.12.2007 as per the FD Details attached				

12/28/2007	Interest accrued on Time Deposits	Journal	1092		Rs. 29,11,075.00
	Being interest accrued on time deposits upto 28.12.2007 as per the FD Details attached				
12/31/2007	Interest accrued on Time Deposits	Journal	1109		Rs. 21,54,406.00
	Being interest accrued on time deposits upto 31.12.2007 as per the FD Details attached				

11. The account also reveals that the corresponding six debit entries had also been made and the same are as under:

Date	Particulars	Vch. Type	Vch. No.	Debit	Credit
9/28/2007	Interest accrued on Time Deposits	Journal	622	Rs. 14,01,704.00	
	Being interest accrued on time deposits upto 21.09.2007 which was passed on 21.09.2007, now reversed				
10/1/2007	Interest accrued on Time Deposits	Journal	644	Rs. 16,78,452.00	
	Being interest accrued on time deposits upto 30.09.2007, now reversed				
12/3/2007	Interest accrued on Time Deposits	Journal	919	Rs. 24,62,284.00	
	Being interest accrued on time deposits upto 30.11.2007, now REVERSED				

12/21/2007	Interest accrued on Time Deposits	Journal	1029	Rs. 21,13,817.00	
	Being interest accrued on time deposits upto 20.12.2007, now REVERSED				
12/31/2007	Interest accrued on Time Deposits	Journal	1108	Rs. 29,11,075.00	
	Being interest accrued on time deposits upto 28.12.2007 as per the FD Details attached, now reversed				
1/1/2008	Interest accrued on Time Deposits	Journal	1139	Rs. 21,54,406.00	
	Being interest accrued on time deposits upto 31.12.2007 as per the FD Details attached, now reversed				

12. We find merit in the submission of the learned counsel for the assessee that the credit journal entries made as accrual of interest were made for the purpose of closing of quarterly results. The entries have been reversed and the interest actually received has been offered to tax. It is not the case of the appellant that the actual interest income received has not been offered to tax. The AO has only taken into account the 'Journal' entries credited in the account. The AO has not taken into account the corresponding 'Journal' entries debited. The CIT(A) as well as the Tribunal on perusal of the account statement have returned findings of fact that there is no suppression of interest income and the entire interest income has been offered to tax.

13. The findings returned by the CIT(A) and confirmed by the Tribunal are purely factual in nature. We have also examined the account statement and are of the view that the findings of fact returned are not perverse. No substantial question of law arises in the facts of the present appeal.

14. The appeal is accordingly dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

MAY 10, 2016
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