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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 8/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-1 .....Appellant

Through: Mr. Siddhartha Sinha, SSC along with Ms. Dacchita Shahi, Ms. Anuja Pethia, JSCs, Mr. Nring Chamwibo Zeliang and Ms. Anu Priya Nisha Minz, Advs.

versus

M/S CENTRAL PARK INFRASTRUCTURE DEVELOPMENT PVT. LTD. .....Respondent

Through: Mr. Rajat Navet and Mr. Rajat Rana, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **28.08.2024**

1. The Principal Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal [‘**Tribunal**’] dated 09 December 2019 and posits the following questions of law for our consideration:-

> “i) Whether on facts & in the circumstances of case and in law, the Hon'ble Tribunal was justified in not adjudicating the ground of revenue regarding admission of additional ground by the CIT(A)?
>
> ii) Whether on the facts & in the circumstances of the case and in law, the Hon’ble Tribunal was justified in upholding the erroneous order of CIT(A) without appreciating the fact that the rental expenses were not actually incurred since TDS was also not made by the assessee?
>
> iii) Whether the Hon’ble Tribunal on facts and circumstances of the case and prevailing law, have erred in deleting the disallowance of the deduction claimed by the Respondent as a lessee in respect

of a *Rent Equalisation Reserve,* aside of the deduction claimed for rent actually paid to DAIL?

iv) Whether the Hon'ble Tribunal on facts and circumstances of the case and prevailing law, failed to considered that Respondent and its sister company had entered into an agreement for sharing expenditure of common nature in the ratio of 80:20, but the rent received from the sister company was not commensurate with the said Agreement and hence an addition of Rs. 47,28,893/-, was correctly made by the AO?

v) Whether the Hon'ble Tribunal on facts and circumstances of the case and prevailing law, erred in confirming the CIT(A)'s erroneous finding that as the business had not yet commenced the rent expenditure and rental income could be 'set-off?

vi) Whether the Hon'ble Tribunal on facts and circumstances of the case and prevailing law, failed to considered that, order of the CIT(A) do not mention as to which amount of income should be netted out with which amount of expenses?

vii) Whether the Hon'ble Tribunal on facts and circumstances of the case and prevailing law, failed to considered that Respondent and the sister concerned company entered into an agreement and agreed to share any expenditure of common nature in the ratio of 80:20 but the same not been done in respect of rent payable.

viii) Whether the Hon'ble Tribunal on facts and circumstances of the case and prevailing law, erred in not providing the opportunity to the Assessing Officer before allowing the additional ground."

2. We note from the order passed by the Commissioner of Income Tax (Appeals) ['**CIT(A)**'] and which has ultimately been affirmed by the Tribunal, that the principal issue was with respect to the lease equalization charges/ rent equalization and which the CIT(A) has found to be covered in light of the judgment rendered by this Court in **CIT v. Virtual Soft Systems Ltd.** [2012 SCC OnLine Del 764].

3. While dealing with this aspect, the CIT(A) has observed as follows:-

"**6.1.1** The submission of the appellant before me has been considered carefully. In short, the case of the appellant is that it has followed AS-19 which is mandatory for a company and has accordingly booked the expenses which should be allowed in determining the correct income of the appellant. The lease equalization charges/rent equalisation is a concept wherein according to the Accounting Standard 19, the entire period of lease is considered and the expenditure is distributed evenly over the period of the lease in order to avoid distortion in working out the financial results. The Hon'ble Delhi High Court in the case of *CIT* v. *Virtual Soft Systems Ltd (2012)* 341 *ITR* 593 *(Del)* has very carefully and meticulously dealt with the said accounting standard 19 and has upheld the order of the Tribunal allowing the debit of lease equalization charges as a method of accounting followed by the assessee which enabled the assessee to determine the real income which was offered for tax.

6.1.2 Therefore, respectfully following the decision of the Hon'ble jurisdictional Delhi High Court by which I am bound, I allow the lease equalisation charges of Rs.3,45,06,000/-.. However, as the activity of running the hotel is in progress, the AO is correct in concluding that the expenditure on rent needs to be capitalized. Accordingly, the total sum of Rs. 7,70,14,078/- being rent expenditure incurred by the appellant arising out of the development agreement with DIAL is held by me as pre-commencement expenditure and capitalized. This ground of the **appellant is partly allowed.**"

4. It is the aforesaid view which has come to be affirmed by the Tribunal.

5. Bearing in mind the undisputed position of the question being covered and answered squarely by *Virtual Soft Systems*, we find no merit in the instant appeal.

6. It shall consequently stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 28, 2024/RW