

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI**

**BEFORE SHRI. G. D. AGRAWAL, PRESIDENT
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.4397/DEL/2014
Assessment Year:2011-12

DCIT Circle 9(I) New Delhi	v.	M/s Sunair Hotels Ltd. A-7, Geetanjali Enclave New Delhi
		TAN/PAN:AAACS1463L
(Applicant)		(Respondent)

Applicant by:	Shri S.S. Rana, CIT (DR)		
Respondent by:	Shri V. K. Bindal, C.A.		
Date of hearing:	29	08	2017
Date of pronouncement:	15	09	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 5.5.2014, passed by the Id. CIT (Appeals)-XII, New Delhi for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for assessment year 2011-12. The grounds raised by the Revenue in the grounds of appeal are as under:-

- 1. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.53,65,800/- made by the AO out of Legal and Professional Charges.*
- 2. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.79,73,476/- made by the AO on account of disallowance of excess claim of depreciation.*

3. The appellant craves to amend, modify, alter, add or forgo any ground(s) of appeal at any time before or during the hearing of this appeal."

2. At the outset, the ld. Counsel for the assessee submitted that both the issues are covered by the decision of the Tribunal in the assessee's own case for assessment years 2009-10 and 2010-11, passed in ITA No. 4450 and 51/DEL/2012, order dated 29/5/2015.

3. On the other hand, the ld. D.R., strongly relied upon the order of the Assessing Officer.

4. So far as the first issue is concerned, that is, addition of Rs.53,65,800/- on account of "legal and professional charges", the brief facts are that the assessee company is engaged in the business of running of Hotel and financial/portfolio management. The assessee had debited an amount of Rs.2,72,31,804/- in its profit & loss account under the head "Legal & Professional charges". In response to the show cause notice issued by the AO, assessee had submitted that out of total sum of Rs.2,72,31,804/- under the head "Legal & Professional charges", sums aggregating to Rs.53,65,800/- were paid to M/s Atul Sharma & Associates, Advocates towards legal and professional charges, which was incurred for litigation expenses for day-to-day running of hotel business of the assessee-company. The Assessing Officer held that in earlier year also this payment was disallowed on the ground that it has not been incurred wholly and exclusively for the purpose of business. Thus, following the precedence of earlier years, AO disallowed the payment of Rs.53,65,800/-.

5. The ld. CIT (A), held that in earlier years similar payments have been allowed by the ld. CIT (A) which has been confirmed by the Tribunal in assessment years 2008-09, 2009-10 and 2010-11.

6. We find that the Tribunal in assessment years 2009-10 and 2010-11 has dealt and decided the identical issue in the assessee's own case in the following manner:-

“4. Brief facts apropos ground no. 3 are that a sum of Rs.1,37,57,137/- had been debited under the head “Legal & professional charges”. The AO noticed that a sum of Rs.14,33,347/- had been paid to M/s Atul Shanna & Associates for litigation charges and professional fees for the cases against VLS Finance Ltd. The AO observed that this payment to M/s Atul Sharma & Associates was treated as expenses not paid wholly and exclusively for the purpose of business in the preceding assessment years and was disallowed u/s 37 of the I.T. Act. He, accordingly, made an addition of Rs.14,33,347/.

4.1. Ld. CIT(A) following the Tribunal's order in assessee's own case for AY 2007-08 (supra), allowed the assessee's claim by observing as under:-

17. The revenue has brought the issue hi appeal before the Appellate Tribunal. The ld. DR relied upon the order of the AO. The ld. Counsel for the assessee, on the other hand, drew our attention to the detail of litigation expenses in all three years and contended that all the expenses were incurred by the company in respect of litigation carried on by the company against BLS Finance Ltd. in different courts. No expenses pertaining to personal litigation or .other litigation of the directors were debited in the books of .account of the assessee. If directors were carrying any litigation in: their personal capacity, those expenses were separately debited in the personal account

of the partners and not claimed by the assessee company. In the light of categorical finding of ld. CIT (A), in our opinion, it was for the revenue authorities to show from the detail of expenses 'that expenses disallowed related to criminal' proceedings against directors, or were otherwise 'inadmissible and were wrongly claimed by the assessee company.' This has not been shown, Therefore, on facts and circumstances for the case, we are unable to interfere with the finding of the ld. CIT (A) that no inadmissible expenditure was claimed by the appellant under the head 'litigation expenses'. Addition 'made was rightly deleted in all the three years. This ground of appeal is also rejected."

4.2. We have heard rival submissions. The order of the ld. CIT(A) on the issue in question being in conformity with the orders of the ITAT for earlier years and there being no change in facts and circumstances, we see no reason to interfere in the order of ld. CIT(A) on the issue in question. Ground no. 3 is dismissed."

7. Since similar facts are permeating in this year also and on same facts there has been a categorical finding by the Tribunal in the earlier years that these expenses were incurred purely in respect of litigation carried out by the company in the course of its business and there is no expense pertaining to personal litigation or litigation of the Directors. In wake of these findings we do not find any justification in the addition made by the Assessing Officer and confirmed by the ld. CIT (A). It is an admitted fact that the expenses on account of Directors' litigations were debited separately in their personal accounts, which were not claimed by the assessee-company. In the light of such categorical finding, we do not find any reason to deviate from earlier years' precedence. Accordingly, the order of the ld. CIT (A) deleting the said addition is confirmed.

8. So far as the second issue is concerned, the same relates to deletion of Rs.79,73,476/- on account of disallowance of excess claim of depreciation. The Assessing Officer has noted that in the block assessment order passed under section 158BC in the assessee's own case, similar issue was considered and disallowance of depreciation was made on the assets which were considered unexplained. This disallowance was made in subsequent assessment years also on the same reasoning by the Assessing Officer. Accordingly, following the earlier years precedence of the assessment orders, the assessing officer disallowed the claim of depreciation to the extent of Rs.79,73,476/-.

9. The Id. CIT (A), noted that this issue stands decided by the Tribunal in favour of the assessee in earlier years and following the same, he deleted the said disallowance.

10. We find that this issue had also come up for consideration before the Tribunal in assessment year 2009-10 wherein, the Tribunal has decided the matter in the following manner:-

"5. Brief facts apropos ground no.4 are that the assessee claimed depreciation to the tune of Rs.36,53,108/-. The AO observed that in assessee's case in the block assessment order u/s 158BC dated 29-11-02, this issue was considered and disallowance out of depreciation was made on the assets which were considered unexplained. This disallowance was made in subsequent assessment years by the AO. He withdrew the excessive depreciation as per calculation given in the chart enclosed as annexure 2 to the tune of Rs.99,31,096/- and made the addition accordingly.

5.1. In appeal, *Id. CIT (A)*, following ITAT's order for earlier years, allowed the claim of the assessee by observing as under:-

"21. The revenue is aggrieved and has brought the issue in appeal before the Appellate Tribunal. During the course of hearing, a copy of order of ITAT 'D' Bench, New Delhi in ITA No. 248/Del/04 and 398/Del/04 in the case of DC1T. CC-JJ Vs. Sunair Hotel Ltd. (assessee company) dated 2611012007 was filed before us. The order was passed in the appeal filed by the revenue in the block assessment. The Tribunal considered the question whether any disallowance by treating expenditure on construction as bogus was justified. The Tribunal noted that certain material collected by the AD was not put to the assessee by the AO. Subsequently, on direction of the appellate authority, the matter was re-examined. The assessee had further produced material to show that cost of construction declared was lower than similar cost shown by other hotels. The Tribunal also noted that cost of construction in the books was supported by valuation carried by DVO. The Tribunal accordingly saw no justification for upholding any disallowance or addition on account of bogus expenses on construction. The order of the *Id. CIT(A)* on the issue was upheld by the Tribunal.

"22. In the light of above order of the Tribunal, we see no justification in sustaining any disallowance of depreciation. As noted earlier, the impugned disallowance as "Protective" is made solely based on similar disallowance and addition made in the block assessment year. No new or fresh material was placed on record to justify addition/disallowance of depreciation in the three years under appeal. The disallowance in block assessment year was deleted by

ld. CIT (A) for the reason already discussed above. The said order has been confirmed by ITAT and disallowance of depreciation or of expenses claimed to be incurred on construction has not been sustained. The assessee has placed all the relevant material on record to justify cost of construction. In the above circumstances, we uphold the order of the CIT (A) deleting the disallowance on depreciation in all the years before us.

5.2. We have heard rival submissions. The order of the ld. CIT(A) on the issue in question being in conformity with the orders of the ITAT for earlier years and there being no change in facts and circumstances, we see no reason to interfere in the order of ld. CIT(A) on the issue in question. Ground no. 4 is dismissed.”

11. Since the Tribunal has confirmed the order of the ld. CIT (A) following the order of the Tribunal in the assessee's own case in earlier years, which finding is applicable on the facts of the present year also, therefore, following the judicial precedence, we confirm the order of the ld. CIT (A) and dismiss the grounds raised by the Revenue.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 15th September, 2017.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 15th September, 2017

JJ: 3108

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

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