

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 685/Ind/2016

निर्धारण वर्ष /Assessment Year: 2011-12

M.P. State Tourism Development Company  
Bhopal

PAN – AABCM – 0086A :: अपीलार्थी /Appellant

Vs

Assistant Commissioner

of Income Tax 1(1), Bhopal :: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri S.S. Deshpande
राजस्व की ओर से/Revenue by	Shri S.S. Mantri – CIT, Sr. DR
सुनवाई की तारीख Date of hearing	8.2.2017
उद्घोषणा की तारीख Date of pronouncement	28.2.2017

**आदेश /O R D E R**

**PER SHRI C.M. GARG, JM**

This appeal has been filed by the assessee against the order of the learned CIT(A)-I, Bhopal, dated 23.3.2016 in First Appeal No. CIT(A)-1/Bhopal/IT-68/14-15 for the assessment year 2011-12.

2. The sole effective ground raised by the assessee-appellant reads as follows :-

*“Commissioner of Income tax Appeal erred in disallowing Rs. 1,50,00,000/- out of repairs and maintenance expenses of Building, Garden and others in spite of fact that details regarding above have already been furnished atg the time of assessment and before Commissioner Appeal. All the expenses are of revenue nature fully vouched and verifiable by auditors appointed by Learned CIT(A)&AG. Instances as pointed out by Hon'ble CIT(A)-I, Bhopal are of revenue nature and no discrepancies have been pointed out by auditors.*

*On the facts and circumstances of the case adhoc disallowance is illegal, unjustified and liable to be deleted.”*

3. We have heard arguments of both the sides and carefully perused the relevant material placed on record of the Tribunal, inter-alia, impugned assessment order, first appellate order and the order of the ITAT, Indore Bench, dated 8.9.2016 passed in the assessee's own appeal for the assessment year 2009-10 in ITA No. 265/Ind/2013.

4. At the very outset, the learned counsel for the assessee submitted that the issue of disallowance out of repairs and maintenance expenses of building, garden and others has been decided by the learned CIT(A) against the assessee by

upholding the order of the Assessing Officer despite the fact that all the relevant details pertaining to the claim of the assessee have already been furnished during the assessment proceedings and first appellate proceedings. The learned counsel for the assessee further submitted that all the expense are revenue in nature which were fully vouched and also verifiable from the report of the auditors appointed by the Comptroller & Auditor General of India. The learned counsel for the assessee vehemently pointed out that the instances pointed out by the first appellate authority for upholding the disallowance have no basis as no discrepancy has been pointed out by the auditors in the audit report.

5. After stating the above, the learned counsel for the assessee drew our attention towards order of the ITAT, Indore Bench, dated 8.9.2016 and submitted that the issue of expenditure on building repairs, other repairs and garden maintenance has been restored to the file of the Assessing Officer to decide the same afresh after giving the assessee an opportunity of being heard. He fairly accepted that in this order the Tribunal has observed that the learned CIT(A)

following his earlier order for the assessment year 2007-08 has upheld part disallowance of 48.12% of expenditure treating the same as capital in nature and added the same back to the total income of the assessee and on the disallowed part, depreciation has been allowed to the assessee.

6. Replying to the above, the learned CIT DR strongly supported the order of the Assessing Officer which was confirmed by the learned CIT(A) by passing the impugned order. However, he could not controvert this factual situation that by the order dated 8.9.2016 of ITAT, Indore Bench, for the assessment year 2009-10, the issue has been restored to the file of the Assessing Officer with the following directions :-

*“14. The first ground taken by the assessee is that the learned CIT(A) was not justified in confirming the action of the Assessing Officer that the sum of Rs.1,31,81,008/- out of total expenditure of Rs.2,36,51,306/- claimed on account of building repairs, other repairs & garden maintenance are of capital nature and disallowable.*

*15. The Assessing Officer noticed that the assessee company had claimed expenses on buildings repair and maintenance amounting to Rs.1,67,33,389/-.The Assessing Officer noted that the assessee had included expenses of capital nature in the repairs and maintenance expenses. these expenses. However, the Assessing Officer made the*

*addition. On appeal, the learned CIT(A) following the decision of the CIT(A) for the assessment year 2007-08 the Assessing Officer disallowed 48.12% of the expenditure treating the same as capital in nature and added back the same to the total income of the assessee. On appeal, the learned CIT(A) considering the fact that the CIT(A) and the Tribunal had confirmed similar disallowance in the earlier years, confirmed the disallowance made by the Assessing Officer. Now the assessee is before us.*

*16. We have heard both the sides. We find that the Tribunal has confirmed the similar disallowance in the earlier years in the case of the assessee itself. We, therefore, find no flaw in the order of the learned CIT(A) and confirm the same. This ground is, therefore, rejected.*

*17. The next ground relates to confirmation of depreciation by the learned CIT(A) on Rs.1,13,81,008/- in case the said amount is treated as an expenditure*

*18. We have heard both the sides. We find that when the learned CIT(A) is justified in treating the expenditure of Rs.2,36,51,306/- as building repairs, other repairs and garden maintenance as capital in nature, therefore, the assessee is entitled to depreciation as per law. We, therefore, set aside the orders of the authorities below and restore this issue to the file of the Assessing Officer to decide the same as per law after giving the assessee an opportunity of being heard.”*

7. In view of the above, we are of the view that that learned CIT DR could not controvert the factual situation that the impugned disallowance of building repairs, garden and others has been restricted to 48.12% of the total expenditure for the

assessment year 2007-08, 2009-10 and 2010-11 and for the assessment year 2009-10 the cross objection of the assessee challenging the part disallowance of 48.12% has been rejected by the Tribunal and the issue has been restored to the file of the Assessing Officer for the limited purpose, by observing that the assessee is entitled to depreciation on the amount of part disallowance as per the provisions of the Act and thus the issue has been restored to the file of the Assessing Officer to decide the same afresh after affording due opportunity of hearing to the assessee. Respectfully following the order of the coordinate Bench of the Tribunal dated 8.9.2016 (supra) in the assessee's own case for the assessment year 2009-10, the issue is restored to the file of the Assessing Officer for the limited purpose with the direction that the assessee is entitled to depreciation as per law on the amount of disallowance and the Assessing Officer is directed to calculate and allow the same as per the facts, circumstances and provisions of the Act.

8. In the result, the appeal of the assessee is partly disallowed by upholding the disallowance of 48.12% of total

impugned expenditure and partly allowed for statistical purposes on the issue of allowability of depreciation on the amount of disallowance.

The order has been pronounced in open Court on 28<sup>th</sup> February, 2017.

Sd/-

लेखा सदस्य  
(O.P.Meena)  
Accountant Member

sd/-

न्यायिक सदस्य  
(C.M. Garg)  
Judicial Member

**February 28<sup>th</sup> , 2017.**

Dn/