

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 251/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Rajasthan Rajya Sahkari Kraya Vikraya Sangh Ltd., 4, Bhawani Singh Road, Jaipur.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR 0279 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri V.K. Jain (C.A.)
राजस्व की ओर से / Revenue by : Shri Ajay Malik (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 16/05/2018
उदघोषणा की तारीख / Date of Pronouncement: 22/05/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28.12.2017 of Id. CIT(A), Jaipur for the assessment year 2013-14. The assessee has raised the following ground under as under:-

"1. That the Learned CIT(Appeals) erred in confirming addition of Rs. 1,00,00,000/- on account of disallowance of contribution of Rs. 1 Crore towards Rajasthan Bhawan, Mumbai. The same is allowable expenditure and addition of Rs. 1,00,00,000/- deserves to be deleted."

2. During the year under consideration the assessee contributed a sum of Rs. 1 crore to Rajasthan Bhawan Mumbai at Mumbai and the same was debited to the P & L account. The AO was of the view that the said amount of Rs. 1 crore being contribution of the Rajasthan Bhawan Mumbai is not covered u/s 37(1) of the Act and accordingly, proposed to disallowance the said amount. The assessee submitted that the contribution was made towards the construction of Rajasthan Bhawan, Mumbai against which the employees of the assessee will be entitled to stay in the premises at nominal and concessional charges. Therefore, the assessee claimed that though the ownership of the asset does not vest with the assessee however, the asset created by the contribution would result in business advantage of the assessee as the employees of the assessee would be permitted to use the premises at concessional and nominal charges. The AO did not accept this contention of the assessee and disallowed the said claim of Rs. 1 crore. On appeal, the Id. CIT(A) confirmed the disallowance made by the AO as to claim of the assessee. Hence, the assessee has filed the present appeal.

3. We have heard the Id. AR as well as the Id. DR and considered the relevant material on record. The Id. DR has strongly relied upon by the order of Assessing officer and submitted that the contribution made by the assessee does not fall under the provisions of Section 37(1) of the Act and further, it is on capital account. The Id. DR has further contended that the asset being the Rajasthan Bhawan, Mumbai does not belong to the assessee and the ownership is not vested with the assessee therefore, any expenditure towards construction of such asset cannot be allowed as business expenditure.

4. On the other hand, the Id. AR of the assessee has submitted that this issue has been considered and decided by this Tribunal in various cases including in the case of Rajasthan Renewal Energy as well as M/s Rajasthan State Industrial Development & Investment Corp. Ltd. vs. DCIT in ITA No. 311/JP/2014, 420/JP/2014, 323/JP/2016, Co. No. 07/JP2016, ITA No. 313/JP/2014, 421/JP/2014, 93/JP/2015, 207/JP/2015, 94/JP/2015, 208/JP2015 vide order dated 23.02.2018. He has further submitted that as per the order dated 24.10.2017 the Government of Rajasthan has allowed the assessee a rebate of 50% for stay in the Rajasthan Bhawan Mumbai at Mumbai. He has filed a copy of the said order dated 24.10.2017.

5. We have considered the rival submissions as well as the relevant material on record. At the outset we note of the Coordinate Benches of this Tribunal in case of M/s Rajasthan State Industrial Development & Investment Corp. Ltd. vs. DCIT (supra) has considered and decided an identical issue in para 36 as under:-

"36. We have considered the rival submissions as well as relevant material on record. At the outset we note that this Tribunal in assessee's own case for the assessment year 2003-04 while considering an issue of the expenditure incurred towards the contribution made to the construction of guest house in Delhi vide order dated 21.08.2007 in ITA No. 324/JP2006 has held in para 12 as under:-

"12. Considering the above submissions, we are of the view that undisputedly assessee was not the owner of the four rooms in the guest house of the State Government at Chanakyapuri in New Delhi and the assessee was only entitled to use those four rooms allotted to it for staying of its officials visiting Delhi. Assessee has no right to sell, alter or amend those allotted room. The guest house was undisputed neither purchased nor constructed by the assessee. The maintenance of these rooms were also in the hands of the State Government who has been charging the same on annual basis from the assessee. Thus in a sense only the facilities to use those allotted four rooms to the assessee were purchased on a lump-sum payment. It is an established position of law that in a case of ownership against immovable property, the unconditional interest in absolute term with freedom to sell, alienate ect. is transferred by the seller to the purchaser, which is admittedly not the case over here. Under these circumstances we are of the view that the Ld. CIT(A) has rightly come to the conclusion that no capital assets have been created to the

assessee but only a privilege or a reservation of four rooms were made on permanent basis to the assessee. Therefore, the provisions of guest house at Delhi was in the normal course of business and expenditure incidental to it is of revenue nature. The Id. CIT(A) has rightly observed further that the AO has not appreciated the facts properly that total expenditure of Rs. 40,00,000/- was deferred in five equal instalments and only Rs. 8,00,000/- was debited in A.Y. 2003-04. Thus, the entire addition of Rs. 40,00,000/- need to be deleted and the claim of depreciation allowed by the AO at Rs. 2,00,000/- is also to be added back in the computation of income as per the first appellate order. We concur with the view of Ld. CIT(A) which also finds support from the decisions of Hon'ble Delhi High Court in the case of NESET Holdings (P) Ltd. v/s CIT(supra) wherein one time payment was allowed as revenue expenditure where such payment is meant for reducing the overall revenue expenditure of the assessee. The guest house in the present case was required only for running the business and working of the assessee for better inter-action with the Government of India and various financial organizations. The first appellate order being comprehensive and reasons one, we are not inclined to interfere therewith. The same is upheld. The ground No. 2 is thus rejected."

We further note that as per letter dated 24.10.2017 the Government of Rajasthan has allowed the assessee a rebate of 75% of tariff of the room for staying of the employees/officers of the assessee. The Coordinate Bench of this Tribunal in case of Rajasthan Renewal Energy Corporation Ltd. vs. DCIT vide order dated 18.08.2017 in ITA No. 159& 202/JP/2015 and others while considering an identical issue has held in para 55 as under:-

"55. We have heard the rival contentions and pursued the material available on record. It is not disputed that the contribution towards construction of Rajasthan Bhawan has been made as directed and authorized by the State Government, being

the owner and shareholder of the assessee company. The question is therefore not about the authorization before incurrance of the said expenditure. The question is whether the said expenditure has been incurred by the assessee company for the purposes of its business or not. The onus is on the assessee company to establish the said fact. The Id AR has submitted that the assessee company has written to the Government of Rajasthan to provide accommodation facilities in the Rajasthan Bhawan to its officers on their visit to Mumbai, however, there is nothing on record to support the said contention. We are accordingly setting aside the matter to the file of the AO to examine the said contention and the examine the matter a fresh. In the result, the ground of the assessee is allowed for statistical purposes.”

Thus, the Tribunal by considering the accommodation facility in the guest house as relevant factor set aside the issue to the record of the AO to examine the accommodation facility available to the assessee in Rajsthan Bhawan at Mumbai.

36. Since this letter dated 24.10.2017 was not available before the Coordinate Bench in case of Rajasthan Renewal Energy Corporation Ltd. (Supra) therefore, the AO was asked to examine the fact. However, in view of the said letter dated 24.10.2017 it is clear that the assessee got the rebate of 75% as well as the right to use the accommodation by its officers/employees visiting at Mumbai. Accordingly, in view of the earlier decision of this Tribunal in assessee’s own case as well as in view of the fact that the assessee has received the benefit in the shape of accommodation against the said expenditure for construction of Rajasthan house we hold that the claim of the assessee is an allowable expenditure u/s 37(1) of the Act.”

Thus, in view of the decision of this Tribunal on the same issue, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22/05/2018

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य/Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur

दिनांक/Dated:- 22/05/2018.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Rajasthan Rajya Sahkari Kraya Vikraya Sangh Ltd., Jaipur
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-6, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 251/JP/2018}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar