

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCHES 'B', CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 577/CHD/2018
Assessment Year: 2008-09

M/s Orbit Resorts Ltd.,
Sector 9-C,
Chandigarh.
PAN : AAAC04024H

V

The DCIT,
Circle 1(1),
Chandigarh.

(Appellant)

(Respondent)

Appellant by : Shri Vineet Krishan
Respondent by : Shri Geetinder Mann, JCIT

Date of hearing : 06.08.2018
Date of Pronouncement : 04.09.2018

ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 16.03.2017 of CIT(A)-1 Gurgaon pertaining to the 2008-09 assessment year on the following grounds :

1. That the order passed under section 250(6) by the Learned Commissioner of Income Tax (Appeals)-I, Gurgaon in Appeal No. 463/P/10-11 dated 16.03.2017 is contrary to law and facts of the case.

2. That in the facts and circumstances of the case and in presence of proper books of accounts maintained with supporting evidence, the Learned Commissioner of Income Tax (Appeals)-I, Gurgaon gravely erred in upholding the addition of Rs. 3,00,000/- made by the Id. Assessing Officer on account of payment made to labour and gardeners.

2. The Id. AR inviting attention to the assessment order submitted that the assessee in the facts of the present case is running a hotel business. In the facts of the present case, the assessee produced books of account which were examined and the AO made a disallowance of Rs. 3 lacs which was challenged in appeal before the CIT(A) unsuccessfully. It was his submission that the expenses disallowed were the payments made to labour/gardeners to maintain garden etc. and to do the odd jobs and these necessarily could not be vouched by way of printed bills

etc. since no specific infirmity has been pointed out, the addition, it has been requested, may be deleted.

3. The Id. Sr.DR relied upon the orders of the authorities below.

4. We have heard the rival submissions and perused the material on record. It is seen that the addition was made by the AO by way of a disallowance in the following manner :

*"4. During the course of assessment proceedings various details were called for from the assessee. The books of accounts along with related bills/vouchers were also called for and examined and it was found that certain bills/ vouchers were not verifiable. Some of the payments of small amounts were made in cash which were not verifiable. The assessee was confronted the same. In response, the assessee submitted, "With respect to the Turnover of the assessee of Rs. 916465054/-, these are petty bills/vouchers. **These petty payments have been made to the labour/gardeners who do not provide printed bills. However all these expenses have been duly reflected in our Books.***

4.1 The reply of the assessee has been considered, however the assessee has not been able to fully reconcile the said expenses with its books of account. After discussion with the assessee, a lump sum amount of Rs. 300000/- is disallowed on estimated basis. Hence an amount of Rs. 300000/- is added back to the income of the assessee. "

(emphasis supplied)

5. The said adhoc addition was upheld by the CIT(A) on the following reasoning :

*"6.2 I have carefully considered the appellant's submissions. It is an admitted fact on record that the expenses under reference were not supported **by proper bill and were claimed on the basis of self made vouchers.** The A.O has specifically pointed out in the assessment order that the appellant had not been able to fully reconcile the said expenses with its books of accounts. Keeping in view the quantum of disallowance, disallowance of Rs. 3 lacs out of the aforesaid expenses cannot be considered to be excessive. The disallowance made by the A.O is accordingly confirmed. This ground of appeal is dismissed."*

(emphasis supplied)

6. We find, on going through the consistent explanation of the assessee and on reading of the aforesaid findings of the authorities below that the addition cannot be sustained. Admittedly, the books supported by vouchers were made available. The AO and the CIT(A) have failed to point out which bill or voucher was not verifiable. The assessee has consistently made a claim that these were bills of payments made towards labour and gardeners which consistent argument on record, we find has not been upset. In the said background, considering the peculiar facts and circumstances of the present case, we find no good reason why estimated disallowance in the facts of the present case can be said to be justified. In the absence of

any rebuttal, considering the facts of the present case, addition is directed to be deleted. Said order was pronounced in the Open Court at the time of hearing itself.

7. In the result, appeal of the assessee is allowed. Said order was pronounced in the Open Court at the time of hearing itself.

Order pronounced in the Open Court on 04.09. 2018.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

'Poonam'

Copy to:

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

Asstt. Registrar
ITAT, Chandigarh.