

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

	I.T.A. No. 703/DEL/2016	
	A.Y. : 2012-13	
ACIT, CIRCLE 24(2), ROOM NO. 163, C.R. BUILDING, NEW DELHI	VS.	SUNAIR HOTELS LTD., A-7, 1 ST FLOOR, GEETANJALI ENCLAVE, NEW DELHI- 110 017 (PAN: AAACS1463L)
(APPELLANT)		(RESPONDENT)

Department by : Ms. Rashmita, Sr. DR
Assessee by : Ms. Sweety Kothari, CA

Date of Hearing : 24.09.2018

Date of Order : 27-09-2018

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the Revenue challenging the Order dated 02.11.2015 in Appeal No. 658/14-15 for assessment year 2012-13 passed by the Ld. Commissioner of Income Tax (Appeals)-8, New Delhi (in Short "Ld. CIT(A)"), where under the Ld. CIT(A) deleted the addition of Rs. 38,33,880/- on account of legal and professional charges and Rs. 71,57,151/- on account of excess claim on depreciation of Rs. 71,57,151/-.

2. Briefly stated facts are that the assessee is engaged in the business of running and managing hotels and allied activities. Assessee has filed its return of income declaring income of Rs. 7,03,16,430/- on 27.9.2012. The case of the assessee was taken up for scrutiny and assessment u/s. 143(3) of the Income Tax Act, 1961 (in Short "Act") was completed by the AO on 17.3.2015 at total income of Rs. 8,13,07,460/- by making total addition of Rs. 1,09,91,031/- under the heads (i) disallowance of Rs. 38,33,880/- on account of Legal & Professional charges and (ii) withdrawal of excess depreciation claim of Rs. 71,57,151/-. Aggrieved by the assessment order dated 17.3.2015, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 02.11.2015 has partly allowed the appeal of the assessee by following the Tribunal's order in assessee's own case for the assessment year 2009-10 and AY 2010-11. Against the impugned order, the Revenue is in appeal before the Tribunal

3. At the outset, the Ld. A.R. for the assessee submitted that both the additions are covered by the decision of the Tribunal in the assessee's own case for assessment year 2011-12, passed in ITA No. 4397/Del/2014, order dated 15.9.2017 and placed the copy of the aforesaid decision of the Tribunal.

4. On the other hand, the Ld. D.R., strongly relied upon the order of the AO.

5. After hearing both the sides, we find that Tribunal in assessment year 2011-12 has dealt with and decided the identical issue relating to addition on account of “Legal and professional charges” in assessee’s own case vide order dated 15.09.2017 in ITA No. 4397/Del/2014 (AY 2011-12) vide para no. 6 & 7 in the following manner:-

“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 Id. 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 Id. 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 Id. 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 Id. 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 Id. 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 Id. CIT (A) deleting the said addition is confirmed."

6. After perusing the aforesaid finding of the Tribunal, we note that the Tribunal has confirmed the order of the Ld. CIT(A) by following the order earlier order of the Tribunal in assessee's own case in earlier years, which finding is applicable on the facts of the present case also, therefore, following the judicial precedence, we confirm the order of the Ld. CIT(A) on the issue in dispute and dismiss the ground raised by the Revenue.

7. We further find that Tribunal in assessment year 2011-12 has also dealt and decided the identical issue relating to addition claim of depreciation in assessee's own case vide order dated 15.09.2017 in ITA No. 4397/Del/2014 (AY 2011-12) vide para no. 10 & 11 in the following manner:-

"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 waqs 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, ld. 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. 2481 Dell 04 and 3981 Dell 04 in the case of DCI T. 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 Id. 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 Id. 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 Id. CIT(A) on the issue in question. Ground no. 4 is dismissed."

11. Since the Tribunal has confirmed the order of the Id. 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 Id. CIT(A) and dismiss the grounds raised by the Revenue."

8. After perusing the aforesaid finding of the Tribunal, we note that the Tribunal has confirmed the order of the Ld. CIT(A) by following the order earlier order of the Tribunal in assessee's own case in earlier years, which finding is also applicable on the facts of the present case also, therefore, following the judicial precedence, we confirm the order of the Ld. CIT(A) on the issue in dispute and dismiss the ground raised by the Revenue.

9. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 27/09/2018.

Sd/-

[G.D. AGRAWAL]
PRESIDENT

Sd/-

[K. NARASIMHA CHARY]
JUDICIAL MEMBER

Date 27/09/2018

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches