

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.448/Ind/2017
Assessment Year: 2012-13**

M.P. Tourism Development Corporation, Bhopal (Appellant)	बनाम/ Vs.	ACIT-2(1), Bhopal (Revenue)
P.A. No.AABCM0086A		

Appellant by	Shri S.S. Deshpande, A.R.
Respondent by	Shri R.S. Ambedkar, Sr.D.R.
Date of Hearing:	13.11.2018
Date of Pronouncement:	06.12.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A)-I, Bhopal dated 30.3.2017 pertaining to the

assessment year 2012-13. The assessee has raised following grounds of appeal:-

1. Commissioner of Income Tax – Appeals erred in confirming the disallowances of Rs. Rs. 2,00,00,000/- (Rs. Two Crores only) made by AO on the ground that assessee had included expenditure of capital nature under the head “Repairs and Maintenance expenses of building , gardens and others ” and in the opinion of learned CIT –A , the exact amount of capital expenditure could not be verified therefore the action of AO regarding this is justified in the present circumstances .
Submitted that whole of the expenses are of revenue nature duly supported by verifiable bills and vouchers and accounts are duly audited by the statutory auditors appointed by C & AG. No discrepancies were pointed out by statutory auditors .
Details regarding this were also produced before AO at the time of assessment for verification . Learned CIT- A has also gone through some of the vouchers regarding repairs and maintenance furnished by the appellant but no specific discrepancies were pointed by CIT –A or AO.
Ad-hoc addition, without mentioning the specific discrepancies, by the A.O and CIT(A) is illegal, unjustified and subject to deletion.
2. Charging of interest U/ 234B is excessive.
3. The appellant prays that the addition of Rs. 2,00,00,000 may kindly be deleted.
4. The assessee craves, leave to add, urge, alter or withdraw any ground or grounds before or any time during this appeal.



2. Briefly stated facts are that the assessee had filed original income, wherein it has declared income at Rs.1,64,05,599/-, however this return was revised on 30.3.2014 declaring income at Rs.2,16,24,804/-. The case of the assessee was picked up for scrutiny assessment and

the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed. The A.O. while framing the assessment rejected the claim of the assessee that expenses incurred under the head 'Repairs and Maintenance' are of the revenue nature. Accordingly, he made addition of Rs.2 crores in this respect.

3. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A). Ld. CIT(A) vide impugned order partly allowed the appeal directing the assessing officer to allow depreciation as per law. However, aggrieved by the order, the assessee is in appeal. Ground Nos.1 & 3 are against confirming the disallowance of Rs.2 crores. Ld. Counsel for the assessee vehemently argued that Ld. CIT(A) was not justified in confirming the additions. He submitted that the expenses are of the revenue nature.

4. On the contrary, Ld. D.R. supported the order of the Ld. CIT(A) stating that the issue is covered by the decision of the Tribunal in earlier assessment years.

5. We have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. Ld. CIT(A) in para Nos.5, 6 & 7 of his order has decided the issue by observing as under:

5. I have carefully considered the facts of the case and the submission of the appellant. I have also gone through some of the vouchers regarding Repairs & Maintenance furnished by the appellant. On perusal of the bills, it is noticed that the appellant had included certain expenses which were of capital nature under the head repairs and maintenance under the head of building. There were other bills also relating to dismantling, demolishing and re-construction of buildings. Thus, it is clear that the appellant had included expenditure of capital nature under the head 'Repairs and Maintenance'. In the absence of complete details, the exact amount of capital expenditure could not be ascertained and in these circumstances, the A.O had no option but to make estimate regarding expenses of capital nature. It is pertinent to mention that my predecessor while deciding the appeal for the A.Y. 2009-10 in order dated 14.02.13 had observed as under:

“It would be relevant to refer the past history of the case. In A.Y. 2006-07, the appellant had claimed total repair & maintenance expenses of Rs.2,80,53,165/-, out of which the AO had disallowed Rs.1,35,00,000/- which was 48.12 % of total expenses. The appellant had not challenged this disallowance in appeal, as no appeal was filed against the assessment order. In A.Y. 2007-08, the AO had disallowed the total expenditure on repair & maintenance of building treating the same as capital expenditure but the ld. CIT (A) after considering the facts of the case confirmed the disallowance to the extent of 48.12 % of the total expenditure on repair & maintenance claimed at Rs.2,80,90,181/- and, accordingly, restricted the disallowance to Rs.1,35,17,000/-. The appellant had not furnished an appeal against this disallowance before the Hon'ble ITAT and the appeal filed by the department against restricting of disallowance by Ld. CIT (A) was dismissed on this issue by the Hon'ble ITAT. The AO in assessment order for A.Y. 2009-10 under consideration disallowed 48.12 % of the total expenses claimed under the head repair & maintenance treating the same as capital expenditure based on past history of the case. Therefore, considering the facts and circumstances of the case and the decision of ld. CIT (A) and Hon'ble ITAT, I am of the opinion that the AO was justified in disallowing 48.12 % of the total expenditure claimed on repair & maintenance treating the same as of capital nature. Therefore, the disallowance of Rs.1,13,81,008/- is confirmed.”

6. As per the submissions given by the appellant, disallowance of Rs. 95,00,000/- was made under the head of Repairs and Maintenance for building, garden and others in the A.Y. 2010-11 by the A.O which was not contested in appeal. Following the order of my

predecessor, while deciding the appeal for the A.Y. 2011-12, the disallowance made by the A.O under this head of Rs. 1,50,00,000/- was confirmed.

7. It is pertinent to note that the Hon'ble ITAT in its order I.T.A No. 685/Ind/2016 for the A.Y. 2011-12 dated 28.02.2017 has confirmed this order. The operative part of the order is as under:

“7. In view of the above, we are of the view that the 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 of 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 08.09.2016 (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.

6. We find that in the case of the assessee this Tribunal in ITA Nos.685/Ind/2016 dated 28.2.2017 has decided the issue by observing as under:

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.

7. There is no change in the facts and circumstances in the present case. The Ld. CIT(A) has followed the decision of the Tribunal. Therefore, we do not see any infirmity in the order of the Ld. CIT(A) and the same is hereby affirmed. Ground Nos.1 & 3 of the assessee are dismissed.

8. Ground No.2 is in respect of charging of interest u/s 234B of the Act. This being consequential, no argument was addressed. We therefore, dismiss the same.

9. Ground No.4 is general in nature and needs no separate adjudication.

10. In the result, the appeal filed by the assessee is dismissed.

Order was pronounced in the open court on 06.12.2018.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 06/12/2018
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore