

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.4887/Del/2014
Assessment Year: 2010-11

DCIT,
Circle-6(1),
New Delhi.

Vs. Mall Hotel Ltd.,
D-893,
New Friends Colony,
New Delhi.
PAN: AABCB0537F

(Appellant)

(Respondent)

Assessee by	:	Shri Anand Kumar Pandey, Advocate
Revenue by	:	Ms Ashima Neb, Sr.DR
Date of Hearing	:	22.01.2019
Date of Pronouncement	:	24.01.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 27th June, 2014 of the CIT(A)-9, New Delhi relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of running hotels, malls and entertainment. It filed its return of income on 14th October, 2010 declaring nil income. The case was selected for scrutiny and statutory notice u/s 143(2) and 142(1) were issued and duly served upon the assessee. In response to the questionnaire issued by the Assessing Officer, the assessee appeared

before the Assessing Officer and filed various details. However, no books of account along with original bills and invoices were produced before the Assessing Officer despite granting repeated opportunities. The Assessing Officer, therefore, rejected the books of account and completed the assessment u/s 144 of the IT Act wherein he made addition of Rs.1,13,37,038/- on account of estimated disallowance of expenses, Rs.2,89,56,740/- on account of house property income as against business income, Rs.30 lakhs out of the unsecured loan of Rs.45 lakhs, Rs.33,12,126/- u/s 40(a)(ia) for non-deduction of tax at source from payments to various parties and Rs.24,06,044/- on account of royalty payment treating the same as capital expenditure. The Assessing Officer accordingly determined the total income at Rs.2,85,69,124/-.

2.1 The assessee filed an appeal before the CIT(A). During appeal proceedings, the assessee challenged the various additions made by the Assessing Officer by filing written submissions and certain additional evidences. The Id.CIT(A), without calling for any remand report or without giving any opportunity to the Assessing Officer and without himself conducting any enquiry or going through the books of account, deleted the various additions made by the Assessing Officer. He also held that there was no basis to reject the books of account.

3. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

õ1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the estimated disallowance of expenses amounting to Rs. 1,13,37,038/- by grossly relying upon the submission of the assessee company and by totally ignoring the fact that the assessee company has filed to

establish its claim by producing the relevant bill/vouchers before the assessing office?

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the estimated disallowance amounting to Rs. 2,89,56,740/- made by AO in respect of expenses incurred by the assessee company to earn the rental income by grossly ignoring the findings of the assessing officer and totally relying upon the submission of the assessee company?

3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 3047597/- made by AO for non deduction of TDS on the expenses made by the assessee company as per provisions of section 40(a)(ia) by taking a view contrary to the material available on records that assessee has failed to produce the relevant document/challans before the AO to substantiate its claim?

4. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition amounting to Rs. 30,00,000/- made u/s 68, by grossly ignoring the fact that onus to establish the source of payments made for repayment of unsecured loans lies on the assessee company which he has failed to discharge?

5. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law

6. That the grounds of appeal are without prejudice to each other.

7. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of the hearing.ö

4. We have heard the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that due to non-production of books of account along with original bills and vouchers despite giving repeated opportunities, the Assessing Officer completed the assessment u/s 144 of the IT Act. We find the Assessing Officer in the assessment order had made addition of Rs.1,13,37,038/- being 10% of the various expenses on estimate basis due to non-furnishing of any supporting evidence in support of various expenses. Similarly, the

rental receipt of Rs.4,29,07,134/- was shown as business income as against income from house property for which the Assessing Officer, after granting deduction u/s 24(a), made addition of Rs.2,89,56,740/-. Similarly, out of the unsecured loan of Rs.45 lakhs, the Assessing Officer made addition of Rs.33,12,126 u/s 40(a)(ia) on account of non-deduction of tax from various payments made to different parties. He has also considered the royalty payment of Rs.24,06,044/- as capital in nature as against revenue in nature treated by the assessee. We find the Id.CIT(A) without calling for any remand report from the Assessing Officer or without giving any opportunity to the Assessing Officer deleted all the major additions. It is not understood as to why the assessee did not produce the books of account along with original bills and vouchers before the Assessing Officer for his verification. We find the Id.CIT(A) also himself has not gone through the books of account and merely on the basis of the higher net profit at 21.17% as against 17.63% in the preceding year held that there is no basis to reject the books of account. In our opinion, since the Id.CIT(A) has not given any opportunity to the Assessing Officer by calling for a remand report from him, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the entire issue to the file of Assessing Officer for *denovo* assessment. The assessee is hereby directed to produce the books of account and all relevant bills and vouchers before the Assessing Officer for his examination. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct

accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

The decision was pronounced in the open court on 24.01.2019.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 24 January, 2019.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	22.01.2019
2.	Draft placed before the author	22.01.2019
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	25.01.2019
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	