

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" 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. 1299 &1300/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14 & 2014-15

M/s Hotel Gaudavan Pvt. Ltd., Fort Rajwada (a unit of Hotel Gaudavan Pvt. Ltd.), Hotel Complex, Jodhpur Barmer Link Road, Jaisalmer.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACH 3581 N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri K.C. Gupta (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/02/2019
उदघोषणा की तारीख / Date of Pronouncement: 08/02/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of Id. CIT(A), Jaipur both dated 28.08.2018 for the assessment years 2013-14 & 2014-15. The assessee has raised common grounds in these appeals. The grounds raised for the assessment year 2013-14 are reproduced as under:-

"1. The Ld. CIT(A) has erred on facts and in law in dismissing the appeal in limine on the ground that appeal is not e-filed and thus invalid and not maintainable.

1.1 The Ld. CIT(A) while dismissing the appeal ex-parte has observed that assessee has not complied with the various notices and the letter issued on 13.08.2018 and even the Chartered Accountant whose POA is on record has not made any compliance even when informed on 21.08.2018 whereas due to the insolvency and bankruptcy petition filed against the assessee, the National Company Law Tribunal vide its order dt. 13.12.2017 directed that the shares of existing shareholders and the management of company is to be transferred/looked after by JFC Finance India Ltd. and therefore, the address of the company as well as the CA changed because of which compliance could not be made.

2. The Ld. CIT(A) has erred on facts and in law in not deciding the appeal on merit even when the issue under appeal has been decided by in favour of the assessee by Hon'ble ITAT in earlier years and also by Ld. CIT(A) in AY 2011-12.

3. The assessee craves to amend, alter and modify any of the grounds of appeal.

4. The appropriate cost be awarded to he assessee."

2. Thus, the assessee has challenged the impugned orders of the Id. CIT(A) whereby the appeals of the assessee were dismissed in limine for want of e-filing of appeal as well as non appearance on behalf of the assessee.

3. The Id. AR of the assessee has submitted that since the assessee was under insolvency resolution proceedings before the National Company Law Tribunal and the address of the assessee was also

changed, therefore, after filing of the appeal the Authorized Representative could not attend the hearing before the Id. CIT(A). He has further submitted that the notice issued by the Id. CIT(A) were not received by the assessee due to the facts and circumstances that the proceedings under Insolvency and Bankruptcy Code (IBC) were pending before the National Company Law Tribunal and vide order dated 13.12.2017 the resolution plan of JFC Finance (India) Ltd. was approved which has taken over the management as well as the assets of the assessee company under the resolution. The Id. AR has thus submitted that non appearance was neither deliberate nor intentional but due to be unavoidable circumstances. Further, the Id. CIT(A) has dismissed the appeals being not maintainable for want of e-filing, however, the assessee is ready to file the appeal electronically if one opportunity is given to the assessee. The Id. AR further submitted that the issue on merits is covered in favour of the assessee by order of this Tribunal for the assessment year 2011-12 which has been upheld by the Hon'ble Jurisdictional High Court. The Assessing Officer has also accepted this fact that the issue was decided in favour of the assessee by the Tribunal, however, since the Revenue has challenged the order before the Hon'ble Jurisdictional High Court, therefore, the AO again

made disallowance. Hence, the Id. AR has submitted that the impugned order of the Id. CIT(A) may be set aside.

4. On the other hand, the Id. DR has relied upon the orders of the Id. CIT(A) and submitted that despite sufficient opportunities to the assessee fail to appear before the Id. CIT(A) and also not file the appeals as per Rule 45 of Income Tax Rules and therefore, in the absence of e-filing of the appeal, the same are not maintainable.

5. We have considered the rival submissions as well as relevant materials on record. At the outset, we note that the assessee was undergoing insolvency and bankruptcy resolution proceedings pending before the National Company Law Tribunal and finally vide order dated 13.12.2017 the resolution plan was approved by the National Company Law Tribunal. Therefore, there was changed in the administrative and management of the assessee and due to the bankruptcy proceedings going on there was non attendance of the proceedings before the Id. CIT(A). Thus, we find that the assessee has explained a reasonable cause for not appearing before the Id. CIT(A). We find that the issue of disallowance depreciation is undisputed covered in favour of the assessee. The Id. CIT(A) has also raised other objection of non filing of the appeal through electronically. Though the appeal filed manual were

within the period of limitation, however not filing of the appeal electronically resulted defects in filing of the appeal by the assessee before the Id. CIT(A). Therefore, the assessee was required to remove the said defect by filing the appeal electronically however, since the Id. CIT(A) has dismissed the appeal in limine, therefore, the assessee could not avail this opportunity of removing the defect. Accordingly, we grant one more opportunity to the assessee to file the appeal electronically and also present its case before the Id. CIT(A). Hence, we set aside the impugned orders of the Id. CIT(A) and remit the matters to the record of the Id. CIT(A) for granting one more opportunity of hearing to the assessee as well as to file the appeals electronically and then, decide the appeals for both years on merits.

In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 08/02/2019

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:- 08/02/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- M/s Hotel Gaudavan Pvt. Ltd., Jaisalmer.
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. 1299 &1300/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar