

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'B', NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 6413/Del/2015

AY: 2009-10

ITA No. 6414/Del/2015

AY: 2011-12

DCIT Central Circle 20 New Delhi	vs.	Ambience Developers and Infrastructure P Ltd. L-4, Green Park Extn. New Delhi 110 016 PAN: AAECA6894P
--	-----	---

ITA No. 6767/Del/2015

AY: 2010-11

Ambience Developers and Infrastructure P Ltd. L-4, Green Park Extn. New Delhi 110 016 PAN: AAECA6894P	vs.	DCIT Central Circle 16 New Delhi
---	-----	--

ITA No. 6766/Del/2015

AY: 2010-11

Ambience Hotels & Resorts Pvt.Ltd. L-4, Green Park Extn. New Delhi 110 016 PAN: AADCA7906K	vs.	DCIT Central Circle 16 New Delhi
--	-----	--

**(Appellant)**

**(Respondent)**

**Department by** : Ms. Nidhi Srivastava, CIT, D.R.

**Assessee by** : Sh. T.R. Talwar, Adv.

**Date of Hearing** : 06/02/2019

**Date of Pronouncement**: 28 /02/2019

## ORDER

### PER BEENA A PILLAI, JUDICIAL MEMBER

Appeals have been filed by assessee as well as revenue, for Assessment Year 2009-10 and 2011-12 passed by Ld.CIT(A)-27, New Delhi against order dated 14/09/15 and by Ld.CIT (A)-33, New Delhi against order dated 30/09/14, for Assessment Year 2010-11, on following grounds of appeal:

*ITA No. 6413/Del/2015 (Revenue's appeal)*

*AY: 2009-10*

- 1. That the Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.10,88,44,182/- on protective basis, made on account of lease rental income ignoring the fact that the assessee company was not legal owner of the property which lease rental income were shown in its accounts.*
- 2. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.  
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

*ITA No. 6414/Del/2015(Revenue's appeal)*

*AY: 2011-12*

- 1. That the Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.12,18,10,152/- on protective basis, made on account of lease rental income ignoring the fact that the assessee company was not legal owner of the property which lease rental income were shown in its accounts.*
- 2. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.  
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

ITA No. 6767/Del/2015 (Assessee's appeal)

AY: 2010-11

" On the facts and circumstances of the case the learned CIT (A) has erred:-

1. In not accepting the lease rentals received from retail spaces of Ambience Hotels and Resorts Pvt. Ltd. (AHRL) and offered for taxation in its hands under an agreement in lieu of interest free deposit of Rs. 75 crores given to AHRL and treating the same income in the hands of AHRL.

2. In not accepting the concept of beneficial ownership of the property in possession and enjoyment as held by the apex court in CIT V. Podar Cement Pvt. Ltd. (1997) 226 ITR 625 (SC) and Jodha Mai Kuthiala (RB) V. CIT (1971) 82 ITR 570 (SC).

3. In not recognizing that section 60 is not applicable, if the income is derived not from transfer of assets but by reason of the right to manage and carry on business.

4. In ignoring the fact that the appellant company had acquired an overriding title over the income from leasing of retail spaces of AHRL under an agreement in lieu of the interest free deposit of Rs. 75 crores given to AHRL, which has not been found to be false or collusive.

5. In ignoring the legal effect of the agreement entered into by the company with AHRL in the ordinary course of business which gave it right to manage AHRL assets and carry on the business of leasing. The agreement is bona fide and unambiguous and creates certain legal rights and obligations which have been acted upon.

6. In disregarding the terms and conditions of the said agreement which gave right to the company to exploit AHRL assets against a consideration for a limited duration which has not been found to be false or collusive

WITHOUT PREJUDICE TO THE ABOVE AND WITHOUT ADMITTING

7. In the event, the income from lease rentals is taxed under the head "income from business and profession" in the assessee's hand, instead of under the head "income from house property", the business expenses incurred there to by the assessee be allowed from the said income."

The appellant craves leave to add, modify, substitute, alter or delete any of the grounds of appeal on or before the date of hearing.

*ITA No. 6766/Del/2015 (Assessee's appeal)  
AY: 2010-11*

*On the facts and circumstances of the case the learned CIT (A) has erred in confirming the order of the Assessing Officer:-*

*1. In assessing the income from leasing of its retail spaces in its hands when the same had been transferred by it and had been legally and right fully enjoyed and offered for taxation by M/s. Ambience Developers and Infrastructure Pvt. Ltd. (ADIPL) under an agreement against the advance of interest free deposit of Rs. 75 crores from ADIPL.*

*2. In not taking judicial notice of the fact that the appellant company had by an agreement given to ADIPL unfettered rights to let-out and manage its retail spaces and to receive and appropriate to its own account all receipts and receivables from the leasing of its retail spaces in lieu of interest free deposit of Rs. 75 crores received from it, which it needed for completion of its Hotel Project.*

*3. In not recognizing that section 60 is not applicable, if the income is derived not from transfer of assets but by reason of the right to manage and carry on business.*

*4. In ignoring the legal effect of the agreement entered into by the company with ADIPL in the ordinary course of business giving it right to manage its assets and carry on the business of leasing. The agreement is bona fide and unambiguous and creates certain legal rights and obligations which have been acted upon.*

*5. In disregarding the terms and conditions of the said agreement which gave right to ADIPL to exploit its assets against a consideration for a limited duration which has not been found to be false or collusive.*

*6. In confirming the disallowance of Rs. 5,56,000/- u/s 14A r.w. Rule 8D(2)(iii) made by the Assessing Officer when no direct or indirect*

*expenditure has been incurred A by the appellant in earning the dividend income from investment which is carrying from earlier year.*

*The appellant craves leave to add, modify, substitute, alter or delete any of the grounds of appeal on or before the date of hearing."*

It is observed that in all these appeals common issues are involved and facts are identical. Cross appeals pertain to assessment year 2010-11 in case of Ambience Hotels and Resorts Pvt.Ltd.

**2. Brief facts of the case are as under:**

**ITA No. 6413/Del/2015(Revenues appeal) (A.Y: 2009-10)**

**2.1.** Original assessment was completed vide order dated 30/12/11 under section 143(3) of I.T. Act, 1961 (the Act) on total income at 'Nil', with carry forward losses of Rs.27,62,89,986/-. Subsequently, Ld.CIT, Central-2, New Delhi, vide order dated 21/03/14, passed order under section 263 of the Act, setting aside, assessment order on certain specific issues to frame assessment afresh.

**2.2.** During assessment proceedings Ld.AO noticed that assessee shown lease and license charges received amounting to Rs.87,29,37,982/-, which included lease rental of Rs.10,88,44,182/- in respect of lease of retail space in Ambience Hotel, Gurgaon. Ld.AO further observed that retail shops and retail space was owned by M/s.Ambience Hotels and Resorts Pvt. Ltd. Ld.AO in view of directions contained in order under section 263 of the Act, called for various details to examine true nature and taxability of license charges received from retail shops and retail

space by assessee during year under consideration. From submissions of assessee, Ld.AO observed that assessee entered into agreement with M/s.Ambience Hotels and Resorts Pvt.Ltd., whereby assessee gave interest-free deposits of Rs.75 lakhs to M/s Ambience Hotels and Resorts Pvt.Ltd, in return of right to receive rental income arising out of lease of retail space/shops.

Ld.AO after considering submissions advanced, came to conclusion that, lease rental amounting to Rs.10,88,44,182/-, cannot be taxed in hands of assessee, but in hands of actual owner of property, being M/s.Ambience Hotels and Resorts Pvt.Ltd., as no transfer of property to assessee has taken place. Ld.AO thus reduced sum of Rs.10,88,44,182/- from assessee's income and assessed the same in hands of assessee on protective basis, whereas, substantive addition was made in the hands of M/s.Ambience Hotels and Resorts Pvt.Ltd. He further denied standard deduction of 30% amounting to ₹32,673,254/-claimed by assessee in its returned income.

**3.** Aggrieved by addition made by Ld.AO assessee preferred appeal before Ld.CIT (A), observed that the lease rentals cannot be assessed under head, 'Income from House Property', as assessee is not legal owner, and it can be assessed under head, 'Income from Business or Profession', as assessee is in business of leasing of properties. Ld.CIT(A) held that business expenses incurred thereto by assessee were required to be allowed from said lease income, as these expenses were added back to assessee to its income.

4. Aggrieved by order of Ld.CIT (A) revenue is in appeal before us now.

5. Ld.CIT DR placed reliance upon order of Ld.AO. He submitted that arrangement has been entered into by assessee with its sister concern, wherein right to receive rental income from retail shop and retail spaces have been given to assessee, against which assessee paid interest-free deposit of ₹ 75 lakhs. Ld.CIT DR strongly objected to arrangement of such kind by placing reliance upon section 60 of the Act, wherein without transfer of assets, income arising therefrom will be chargeable in the hands of transferor, and will be included in total income of transferor. It has been submitted by Ld. CIT.DR that, rental income in hands of assessee would amount to application of profits. She then submitted that *de facto* owner of property should be taxed in respect of rental income subject to deductions allowable, and merely because an overriding title has been created by virtue of an agreement entered into between assessee and the de facto owner of property, would not relieve *de facto* owner from its liability to pay tax under section 22 of the Act.

6. On the contrary, Ld.AR contended that, lease rental income has been received by assessee on the basis of its right to manage and carry out business, as per agreement dated 31/03/2008, entered into between assessee and M/s. Ambience Hotels and Resorts Pvt. Ltd. it has been submitted that M/s. Ambience Hotels and Resorts Pvt. Ltd., ceased to be owner of such property more particularly described in agreement dated 31/03/2008 which has been entered into for a limited period of time.

7. We have perused submissions advanced by both sides in the light of the records placed before us.

8. We have perused order passed by this Tribunal dated 07/07/2017 in Cross Appeals, in case of assessee for Assessment Year 2008-09 in ITA No.413/Del/2014 and ITA No.354/Del/2014. This Tribunal having regard to Agreement entered into by assessee with M/s.Ambience Hotels and Resorts Pvt.Ltd., dated 31/03/2008, came to conclusion as under:

*"13. In the instant case, the entire arrangement of transferring of shops and retail space by AHRPL to ADIPL is based upon agreement dated 31.03.2008 entered into between the AHRPL and DIPL, the operative clauses thereof are reproduced as under for ready reference.*

*"1. That in consideration of above said deposit of Rs.75,00,000/- (Rupees Seventy Five Crores Only), the First Party doth hereby agrees to grant and assign in favour of the Second Party all its rights and interest to lease and manage the Said Space or any part thereof and to receive and appropriate to its own account all receipts and receivables from the leasing of Said Space or any part thereof.*

*2. That the aforesaid sum of Rs.75,00,00,000/- (Rupees Seventy Five Crores Only) has been paid by the Second Party to the First Party (the receipt whereof the First Party hereby admits and acknowledges) as an interest-free refundable deposit The First Party may refund the said interest-free deposit by giving a one year notice in writing, at any time after the initial period of three years. However, the tenure of this agreement shall not exceed 10 years and First Party shall refund the said refundable security deposit to the Second Party and simultaneously the Second Party shall surrender its rights for sub-letting and managing the Said Space to the First Party.*

3. *That this agreement shall be deemed to be effective from the date of this Agreement or the date of the Agreement for Taking Possession for Fit Out(s) entered into with tenants/occupants of the various retail spaces comprising the Said Space or any part thereof by the First Party, whichever is earlier.*

4. *That the Second Party shall be entitled to receive the monthly rent or other charges/including the arrears of rent / charges if any from the tenants or persons in occupation of their respective portion in the Said Space in its own name and all these tenants/occupants shall be deemed to be the tenants/occupants of the Second Party and the Second Party shall have the right to receive the rent or charges from them during the currency of this Agreement and also to deal/negotiate with the said tenants occupants in the manner the Second Party deem fit and proper."*

14. *When we peruse the recitals of the Agreement (supra) reproduced above particularly clause 4, it goes to unequivocally prove that the second party to the Agreement (supra), namely, ADIPL is entitled to receive the rent or the charges from the tenants/occupants during the currency of this agreement. When ADIPL has got rights and interest in the property in question by virtue of the Agreement (supra) w.e.f. 31.03.2008 then it is estopped by its own act-and conduct from showing the income from the rental of the shops and rental space in its hands for the earlier period prior to 31.03.2008."*

**8.1.** It is observed that Ld. AO for year under consideration in case of present assessee, made addition of ₹ 10,88,44,182/-on protective basis. Since assessee is not the *de facto* owner but received rental income from leased premises which was originally owned by M/s. Ambience Hotels and Resorts Pvt.Ltd., we are of considered opinion that such rental income should be assessed in

hands of M/s.Ambience Hotels and Resorts Pvt.Ltd. by virtue of Section 22 and 27 of the Act.

**8.2.** Thus respectfully following the view of this Tribunal in assessee's own case for preceding assessment years, we are not in agreement with reasoning by Ld.CIT(A) based on which addition has been deleted.

**8.3.** We are of considered opinion that said rental income is taxable in the hands of M/s. Ambience Hotels and Resorts Pvt.Ltd., as there is no transfer of capital asset to assessee.

Section 22 & 27 of the Act is reproduced hereunder:

22. Income from House property

*(1) The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income- tax, shall be chargeable to income- tax under the head" Income from house property".*

27. " Owner of house property", " annual charge", etc., defined For the purposes of sections 22 to 26

*(i) an individual who transfers otherwise than' for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;*

*(ii) the holder of an impartable estate shall be deemed to be the individual owner of all the properties comprised in the estate;*

*(iii) a member of a co- operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;*

*(iiia) a person who is allowed to' take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 2 (4 of 1882 ), shall be deemed to be the owner of that building or part thereof;*

*(iiib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;]*

*(iv) " annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government;*

*(v) " capital charge" means a charge to secure the discharge of a liability of a capital nature;*

*(vi) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.*

Thus protective assessment made in hands of assessee to the extent of income received from lease of shops/spaces as per agreement dated 31.03.2008 deserves to be deleted. Assessee cannot be allowed to claim standard deduction under such circumstances in returned income in respect of rental income earned from such premises.

**8.4.** Ld. AO is directed to tax rental income in hands of M/s. Ambience Hotels and Resorts Pvt.Ltd., for year under consideration by granting standard deduction available as per law.

**8.5. Accordingly, grounds raised by revenue stands dismissed on the basis of above reasoning.**

**9. In the result appeal filed by revenue stands dismissed.**

## **10. ITA No. 6414/Del/2015 (Revenues appeal)**

### **(A.Y:2011-12)**

**10.1.** Ground raised by revenue in this appeal is similar to assessment year 2009-10. Admittedly facts and circumstances are identical and rental income received by assessee during year is based on agreement dated 31/03/2008, entered into by assessee with Ambience Hotels and Resorts Pvt.Ltd.

**10.2.** No new facts have been brought on record by revenue, and arguments advanced by both sides are same as reproduced herein above.

**10.3.** Respectfully following our view on basis of reasoning recorded hereinabove, we direct Ld. AO to delete addition made in hands of assessee.

**10.4. Accordingly grounds raised by revenue stands dismissed.**

**11. In the result appeal filed by revenue stands dismissed.**

## **12. ITA No. 6766/Del/15**

### **(M/s.Ambience Hotels and Resorts Pvt.Ltd)**

#### **Assessment year 2010-11**

**12.1.** In present appeal, assessee has challenged taxation of income from leasing of shops/retail spaces in its hands for the year under consideration and the disallowance computed by Ld.AO under section 14 A read with rule 8D (2) (iii) of the Act amounting to ₹5,56,000/-

### **12.1. Ground No. 1-5**

Issue raised by assessee in these grounds are regarding taxability of lease rentals arising out of retail shops and retail spaces owned by assessee.

**12.2.** Facts herein are similar to that reproduced herein above. There is rental income from retail spaces and retail shops owned by assessee, which was collected by M/s.Ambience Developers and Infrastructure Pvt.Ltd., by virtue of agreement dated 31/03/2008. Assessee has raised a plea that, Section 60 is not applicable to facts of case before us.

**12.3.** Admittedly, facts involved in this case are identical to that of appeals considered hereinabove. Both parties have referred to and relied upon same arguments, that has been advanced hereinabove.

**13.** We have perused submissions advanced by both sides in the light of the records placed before us.

**13.1.** We have already taken a view in aforesaid appeals regarding taxability of rental income received from leased premises to be considered in the hands of M/s.Ambience Hotels and Resorts Pvt.Ltd.

**13.2.** Legislative history for enactment of section 60 would be relevant at this stage. Section 60-63 of the Act corresponds to section 16 (1) (c ) of 1922 Act. For doing so we refer to and rely upon commentary by '*Chaturvedi Pithisaria's*' to Income Tax Law given in *Sixth Edition 2014 Volume 4*, which is as under:

***"Section 60 compared to section 16(1)(c) of the 1922 Act-  
Change in law:-***

*Sections 60 to 63 of the 1961 Act correspond to section 16(1)(c) of the 1922 Act. Section 16(1)(c) had two limbs and three provisos. The first two Provisos merely defined the scope of some of the words and expressions used in section 16(1)(c). Proviso 3 was really a proviso in the sense that it excepted the from the operation of both limbs of the main section 16(1)(c).*

*The framers of the 1961 Act untied the provisions of section 16(1)(c) and therefrom carved out sections 60, 61, 62 and 63 of the 1961 Act. In doing so, some of the words and expressions have been from one position to another, and it appears that thereby a possible relevant law has resulted.*

*One such instance is section 60. When the same provisions part of the first limb of section 16(1)(c) of the 1922 Act, the they were subject to the exception carved out by the third proviso to that clause. In section 60 of the 1961 Act, the provisions do not suffer any such exception as contained in the third Proviso to 16(1)(c). In other words, even if section 16(1)(c) had application because of the fact of the assets remaining the property of the transferor, where (i) the transfer was not revocable for a period exceeding six years or during the life time of the person and (ii) the transferor did not derive any direct or indirect benefit from the transferred income, the income was not to be included in the total income of the transferor by virtue of the main section 16(1)(c) but was saved by the proviso 3 to be included in the total income of the transferee [see, *D. R. Shahapure v. CIT* (1946) 14 ITR 781 (Bom); *S. Kartar Singh v. CIT*, (1969) 73 ITR 438*

*(Del); S. Venugopala Varma Rajah vs. Comr.Ag.IT, (1968) 68 ITR 83 (Ker), affirmed, (1972) 84 ITR 466 (SC).*

*In the 1961 Act, section 60 is independent and stands alone The income which could, under proviso 3 to section 16(1)(c) of the 1922 Act be assessed in the hands of the transferee is, under section 60 of the 1961 Act, to be assessed in the hands of the transferor under all circumstances.*

**Object of enactment.**—*Section 60 is merely declaratory of a principle which is well settled under the income-tax law, namely, that profits on their coming into existence attract tax at that point and that the revenue is not concerned with the subsequent application of the profits. If a person has alienated or assigned the source of his income, he would not be liable to be taxed upon the income arising from that source thereafter unless some statutory provisions, such as those contained in section 60 to 64, are attracted.*

*Leaving out such cases and those where the income is diverted along with the source producing it, the mere fact that the recipient is constrained to apply it in a particular manner either under a statute or under certain contracts would not affect assessee's liability to tax.*

*This is often expressed by saying that application or destination of profits or a charge which has been made upon them by previous agreement or otherwise is immaterial for the purpose of taxation. The above principle is statutorily enacted in section 60. A transfer of income alone without there being a transfer of the source of that*

*income is a mere application of the income (CIT vs. Dr. Rameshwar Lal Pahwa, (1980) 123 ITR 681, 687-88 (Del). Also see Provat Kumar Mitter v. CIT, (1961) 41 ITR 624 (SC); CIT v. Smt. Nandiniben Narottamdas, (1983) 140 ITR 16, 26 (Guj)]. Also see, "Diversion or application of income", u/s. 4, ante.*

*The object underlying the provisions of section 60 is to meet with the device which was being adopted by the assessee by which while retaining the interest in the property, its income would be allowed to go to someone else, so that it is not taxed in the hands of the assessee. In such cases, even if the arrangement is made by which the income is received by someone else, by fiction it would be regarded as the income of the transferor and assessed as such. This fiction would operate only when the asset which produces the income still remains the property of the transferor, while the income belongs to the transferee [CIT v. Manharlal Girdharlal Doshit, (1998) 231 ITR 89, 94 (Guj)].*

**Scope of section 60.**—Section 60 is attracted in the following circumstances, that is to say,—

- (i) there are assets yielding an income,*
  - (ii) such income is transferred by overriding title, by the owner of the assets,*
  - (iii) but the owner keeps the property in the assets unto himself and does not include such property in the transfer,*
- then, in such cases, section 60 provides, that—*
- (a) all such transferred income arising out of the so retained assets;*

*(b) shall be chargeable to income-tax as the income of the transferor (and shall be included in transferor's total income),*

*in all cases, irrespective of whether—*

*—the transfer is revocable or irrevocable, and —*

*—the transfer of income is effected before or after April 1, 1962.”*

**13.3.** Thus from above, it is clear that, section 60 contemplates income arising to transferee which should be taxed in the hands of transferor in the event there is no actual transfer of assets from which such income accrued. This fiction under section 60 operates irrespective of whether the concerned transfer is irrevocable or not. Thus essential condition is that there should be no transfer of asset from which such income arises. There are various decisions of *Hon'ble Supreme Court* and *Hon'ble High Court's*, wherein, relation of property from which income arises has been considered to be an essential condition for applicability of section 60.

**13.4.** We are therefore unable to concur with argument advanced by Ld.AR for taxing rental income received from leased premises in the hands of M/s.Ambience Developers and Infrastructure Pvt.Ltd., when such assets are owned and held by assessee. The exception argued by Ld.AR is no longer available to assessee, by virtue of strict interpretation of section 60-63 of the Act.

**13.5.** We are therefore inclined to uphold view of Ld.CIT (A) that income from leasing of shops/retail spaces has to be assessed in the hands of assessee under the head, 'Income from House Property', after allowing statutory deductions under section 24 of the Act.

**13.6. Accordingly ground No. 1-5 stands dismissed.**

**14. Ground No. 6**

Ld.AO observed that, assessee made investment of Rs.21,54,72,937/-, in shares during year under consideration. Keeping in view investment made, Ld.AO computed 0.5% of average investment and computed disallowance under section 14 A of the Act, read with Rule 8D, to the extent of ₹5,56,000/-.

**15.** Aggrieved by addition made by Ld.AO, assessee preferred appeal before Ld.CIT (A), who confirmed disallowance made by Ld.AO.

**16.** Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

**17.** Ld.AR argued that, no expenditure has been incurred by assessee for making such huge investments.

**18.** On the contrary, Ld.CIT.DR submitted that assessee received dividend amounting to ₹1,48,000/-, on investment in equity shares of M/s. Uflex Ltd. During the year, assessee made investment in its subsidiaries being, M/s.Aman Hospitality Pvt.Ltd., and Ambience Commercial Pvt.Ltd., amounting to ₹196,606,700/- and Rs.1,19,39,600/- holding 100% equity. He submitted that assessee has not earned dividend from these investment. He placed reliance upon decision of *Hon'ble Supreme Court* in case of *Maxopp Investment Ltd. vs. CIT* reported in (2018) 91 taxmann.com 154(SC).

**19.** We have perused submissions advanced by both sides in the light of the records placed before us.

**19.1.** Admittedly, assessee during the year has earned dividend amounting to ₹1,48,000/-. Further, there is substantial investment made by assessee in its subsidiaries during the year. We agree with the submissions advanced by Ld. CIT DR that the ratio laid down by *Hon'ble Supreme Court* in case of *Maxop Investment vs. CIT (supra)* would be applicable under such circumstances.

**19.2.** However in our opinion disallowance cannot exceed dividend earned during the year. Therefore we restrict disallowance to the extent of dividend earned.

**19.3. Accordingly this ground raised by assessee stands partly allowed.**

**20. In the result appeal filed by assessee stands partly allowed.**

**21. ITA No.6767/Del/15**

**Ground No. 1-7** raised by assessee is in respect of observations of Ld.CIT (A) in treating income received from leasing of shops/retail spaces in the hands of M/s. Ambience Hotels and Resorts Pvt.Ltd., under head, 'Income from House Property'.

**22.** We have already upheld the same in case of M/s. Ambience Hotels and Resorts Pvt.Ltd hereinabove.

**23.** We refer to and rely upon our discussions in respect of the same in the preceding paragraphs of this order. Relying upon the same we uphold the view of Ld.CIT (A) in deleting the addition of ₹10,13,30,442/- made in the hands of assessee on protective basis.

**24. Accordingly these grounds raised by assessee stands dismissed.**

**25. In the result appeal filed by this assessee stands dismissed.**  
Order pronounced in the open court on 28<sup>th</sup> February, 2019.

**Sd/-  
(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 28<sup>th</sup> February, 2019

- GMV

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

*Ambience Developers and Infrastructure P Ltd./Ambience Hotels & Resorts Pvt.Ltd.*

	Date
Draft dictated on	15.02.19
Draft placed before author	18.02.19 19.02.19
Draft proposed & placed before the second member	27.02.19
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	28.02.19
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	