

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1721/Del./2017
(ASSESSMENT YEAR : 2012-13)**

**ITA No.1722/Del./2017
(ASSESSMENT YEAR : 2009-10)**

M/s. Mall Hotel Limited, D – 893, New Friends Colony, New Delhi.	vs.	DCIT, Circle 16 (1), New Delhi.
(PAN :AADCM3128R) (APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Anand Kumar Pandey, Advocate
REVENUE BY : Smt. Rinku Singh, Senior DR

Date of Hearing : 20.05.2019
Date of Order : 27.05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Mall Hotel Limited (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders both dated 18.01.2017 passed by the Commissioner of Income-tax (Appeals)-6, New Delhi qua the

assessment years 2009-10 & 2012-13 on identical grounds inter alia that:-

“1. BECAUSE the Ld. Commissioner of Income Tax (Appeals), New Delhi has erred in law and on facts, while passing the order u/s. 250 of the Income Tax Act, 1961.

2. BECAUSE the Ld. Commissioner of Income Tax (Appeals), New Delhi has erred in law and on facts, by upholding the treatment of the rental receipts amounting to Rs.4,60,42,522/- as income from the house property instead of business income as claimed by the appellant company.

3. BECAUSE the Ld. Commissioner of Income Tax (Appeals), New Delhi has erred in law and on facts, by upholding the application and calculation of the expenses on the basis of proportionate expenses against the receipts.

4. BECAUSE the Ld. Commissioner of Income Tax (Appeals), New Delhi has erred in law and all facts, by upholding the initiation of penalty proceedings u/s. 271(1)(c) of the I.T. Act, 1961.

5. BECAUSE the appellant craves for the indulgence of the Hon'ble Court so as to permit it to raise additional ground/grounds of appeal and/or to verify or modify the grounds already taken.

6. BECAUSE the order appealed against is contrary to the facts, law and principles of natural justice.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : For AY 2009-10, assessment was completed under section 143(3) read with section 147 of the Income-tax Act, 1961 (for short ‘the Act’) and for AY 2012-13, assessment was framed under section 143 of the Act. Assessee being into the business of hotel and cinema/theatre claimed the rental income under the head ‘business income’. AO, declining the contentions raised by the assessee, treated the rental income of Rs.4,60,42,522/- and Rs.4,60,70,849/- for AYs 2019-20 and

2012-13 respectively as income from the house property instead of business income as claimed by the assessee. AO also calculated the expenses on the basis of proportionate expenses incurred in earning the rental receipt and business receipt and thereby assessed the total income of the assessee at Rs.1,50,40,900/- and Rs.5,57,55,010/- for AYs 2009-10 and 2012-13 respectively.

4. Assessee carried the matter by way of appeals before the Id. CIT (A) who has dismissed the appeals for non-prosecution on failure of the assessee to appear during the appellate proceedings. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Bare perusal of the impugned orders passed by the Id. CIT (A) go to prove that it has shown to have issued the notices to the assessee for hearing on 28.10.2016, 06.12.2009 and 17.01.2017 but none appeared on behalf of the assessee. However, the order passed by the Id. CIT (A) is silent if that notices issued by the Id. CIT (A) were ever served upon the assessee. It is the case of the assessee that it has never received any such notice for hearing.

7. Moreover the coordinate Bench of the Tribunal in *assessee's own case for AY 2010-11 in ITA No.4887/Del/2014* restored the identical issue to the file of AO for fresh assessment after examining the issue on merits. Ld. AR for the assessee and ld. DR for the Revenue also agreed that interest of justice would be met if these appeals are remanded back to AO for fresh assessment. In these circumstances, we are of the considered view that firstly, adequate opportunity of being heard is required to be provided to the assessee and secondly, when identical issue is pending consideration with AO having been restored by the coordinate Bench of the Tribunal in assessee's own case for AY 2010-11, it would be in the interest of justice to remand these appeals to the file of AO to decide afresh in the light of the directions issued by the coordinate Bench of the Tribunal in AY 2010-11. Consequently, both the aforesaid appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in open court on this 27th day of May, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 27th day of May, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-40, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.