

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos. and Assessment year	Appellant	Respondent
3405/Bang/2018 2013-14	M/s. East West Hotels Ltd., No.3115, 6 th Main, 13 th Cross, HAL 2 nd Stage, Indira Nagar, Bengaluru – 560 008. PAN : AABCE 0877 B	Deputy Commissioner of Income Tax, Circle-2(1)(2), Bangalore.
3406/Bang/2018 2014-15	-do-	The Income Tax Officer, Ward-2(1)(4), Bengaluru.

Assessee by	:	Shri. Padamchand Khincha, CA
Revenue by	:	Shri. Vikas Suryavamshi, Addl. CIT

Date of hearing	:	01.07.2019
Date of Pronouncement	:	23.07.2019

ORDER

Per Jason P. Boaz, Accountant Member:

These appeals by the assessee are directed against the orders of CIT(A)-2, Bangalore, dated 31.10.2018 for Assessment Years 2013-14 to 2014-15.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee is a public limited company incorporated on 23.05.1969 having its registered office in Bangalore. By way of ‘Licence Agreement’ dated 01.06.1987 with ‘The Indian Hotels Company Ltd.’ (‘IHC’ in short), a Taj Group company, the assessee granted ‘IHC’, the licence to run, operate, renovate,

expand, develop and manage the hotel together with all the related facilities and business appurtenant thereto; including the land on which the said hotel stood. In terms of clause vi of supplemental Licence Agreement, 'IHC' was permitted to assign this agreement to Gateway Hotels and Gateway Resorts Ltd.; a company also from the Taj Group of Hotels. The licence to the 'IHC' was initially granted for a period of 33 years and such tenure could be further renewed for a further period of 66 years; in two periods of 33 years each. In lieu of granting of Licence to 'IHC', the assessee was entitled to a licence fee computed on the basis of profits of the business of hotel operation.

2.2 For Assessment Year 2013-14, the assessee filed its return of income on 27.09.2013 declaring income of Rs.1,24,18,760/- which consisted of income under the head 'Income from house property', Business Income and Income from Other Sources'. In the previous year relevant to Assessment Year 2013-14, the assessee received Licence Fees amounting to Rs.3,41,38,532/- from M/s. Taj Group of Hotels; treated the same as Income from Other Sources and claimed deduction therefrom for various expenses such as staff remuneration and welfare expenses, power, fuel and water charges, administrative expenses, depreciation, etc. The Assessing Officer (AO) examined the allowability of the expenditure claimed on 'Income from Other Sources'. According to the AO, the expenses claimed by the assessee were similar to those as may be admissible for earning of 'Income from Business and Profession'; but was of the view that the scope of allowance of expenditure when computing the income under 'Other Sources' was narrower than that under the head 'Income from Business'. Deduction admissible under section 30 to 38 of the Income Tax Act, 1961 (in short 'the Act') from 'Business Income' cannot be imported wholesale into section 57 of the Act and consequently the AO held that the scope of section 57 of the Act is narrower than that of section 37(1) of the Act, because unless an expenditure has been expended wholly and exclusively for the purpose of making or earning 'Income from Other

Sources', it cannot allowed as a deduction. The AO was of the view that the expression "for the purpose of business or profession" used in section 37(1) of the Act had a much wider implication than the expression "for the purposes of making or earning income" used in section 57(iii) of the Act; which was more specific in nature in as much as it points to a precise and specific object of making or earning income. In that view of the matter, the AO held that since the assessee has earned income under the head 'Other Sources', the normal expenditure allowable under the head 'Business' cannot be allowed and therefore expenditure allowable was restricted only to such payments which are separately binding on the company which is a legal entity; such as Salaries, PF, ESI and other expenses which must necessarily be incurred to maintain its legal status under the Companies Act. The AO accordingly disallowed expenditure amounting to Rs.1,15,61,952/- (items listed at i to xv) on pages 5 and 6 of the order of assessment and computed the net 'Income from Other Sources' at Rs.3,56,44,444/-. The assessment was accordingly concluded under section 143(3) of the Act vide order dated 31.03.2016.

2.3 For Assessment Year 2014-15, the assessee filed its return of income on 30.09.2014 declaring total income of Rs.1,31,06,000/-. The case was taken up for scrutiny for this Assessment Year and the assessment was concluded under section 143(3) of the Act vide order dated 25.10.2016 wherein the AO held, as in Assessment Year 2013-14, that the Licence Fees received by the assessee was exigible to tax under the head 'Income from Other Sources' and not as 'Income from House Property' as declared by the assessee. Similar treatment was meted out to the assessee in this year on this issue, as was held in the immediately preceding Assessment Year 2013-14.

3. Aggrieved by the orders of assessment dated 31.03.2016 for Assessment Year 2013-14 and dated 25.10.2016 for Assessment Year 2014-15, the assessee

preferred appeals before CIT(A)-2, Bangalore. The CIT(A) disposed off these two appeals by way of a combined order dated 31.10.2018 allowing the assessee partial relief. In this order, the CIT(A) came to the finding that the licence fee received by the assessee is exigible to tax under the head 'Income from Other Sources' and not 'Income from House Property' as claimed by the assessee by following the decisions, *inter alia*, of the Hon'ble Karnataka High Court and of the Co-ordinate Bench of this Tribunal in the assessee's own case in ITA Nos.324 to 328/Bang/2014 dated 03.11.2016 for Assessment Years 2005-06 to 2010-11; accordingly directed the AO to allow the direct expenditure incurred by the assessee, if any, incurred wholly and exclusively for earning the licence fee.

4. The assessee, being aggrieved by the orders of CIT(A)-2, Bangalore, dated 31.10.2018 for Assessment Years 2013-14 and 2014-15, has preferred these appeals wherein it has raised the following grounds:-

4.1 Assessment Year 2013-14

1. General Ground

1.1 The learned Deputy Commissioner of Income Tax, Circle-2(1)(2), Bangalore ('AO') has erred in passing the assessment order under section 143(3) of the Income Tax Act, 1961 ('the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals)-2 ('CIT(A)') has erred in confirming the said assessment order. The said order to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Grounds relating to treatment of license fees as Income from House Property

Tax Effect : [Rs. 2,32,27,684*32.445%]= Rs. 75,36,222

2.1. The learned AO and CIT(A) have erred in concluding that income from license fees is chargeable to tax under the head "Income from Other Sources".

1. General Ground

1.1 The learned Deputy Commissioner of Income Tax, Circle-2(1)(2), Bangalore ('AO') has erred in passing the assessment order under section 143(3) of the Income Tax Act, 1961 ('the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals)-2 ('CIT(A)') has erred in confirming the said assessment order. The said order to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Grounds relating to treatment of license fees as Income from House Property

Tax Effect : [Rs. 2,32,27,684*32.445%]= Rs. 75,36,222

2.1. The learned AO and CIT(A) have erred in concluding that income from license fees is chargeable to tax under the head "Income from Other Sources".

2.2. The learned CIT(A) erred in directing the AO to allow only direct expenditure incurred in relation to the license income.

2.3. The learned AO and CIT(A) failed to appreciate that all expenses incurred wholly and exclusively for the purposes of earning the income, direct or indirect, are to be allowed as per provisions of section 57(iii) of the Act.

4. Grounds relating to disallowance of Donation.

Tax effect: [Rs. 1,80,000*32.445%]= Rs. 58,401

4.1. The learned CIT(A) erred in not adjudicating on the ground relating to the double disallowance of donation amounting to Rs. 1,80,000 [being ground no 8 of Form 35 filed with the CIT(A)].

5. Grounds relating to interest under section 234B

5.1. The learned AO and CIT(A) erred in levying interest under section 234B amounting to Rs.

10,86,552. The appellant denies its liability to pay interest under section 234B.

4.2 Assessment Year 2014-15

1. General Ground

The learned Income Tax Officer, Ward-2(1)(4) , Bangalore ('AO') has erred in passing the assessment order under section 143(3) of the Income Tax Act, 1961 ('the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals)-2 ('CIT(A)') has erred in confirming the said assessment order. The said order to the extent prejudicial to the appellant is bad in law and liable to be quashed.

2. Grounds relating to treatment of license fees as Income from House Property

Tax Effect : [Rs. 1,04,70,200*32.445%]= Rs. 33,97,056

2.1. The learned AO and CIT(A) have erred in concluding that income from license fees is chargeable to tax under the head "Income from Other Sources".

2.2. The learned CIT(A) erred in relying on the decision of Karnataka High Court for AY 1995-96 to 1999-00 dated 20.02.2008 in the appellant own case without appreciating that the verdict was on facts and circumstances prevailing in those years, which are substantially different in the year under consideration.

2.3. The learned CIT(A) erred in ignoring the assessment order in appellants own case for AY 2012-13, wherein taxability of license fees was accepted as Income from House Property.

3. Grounds relating to disallowance of expenses

Tax Effect : [Rs. 3,55,525*32.445%]= Rs. 1,15,350

3.1. The learned CIT(A) erred in not adjudicating on grounds relating to allowability of expenses [being ground nos. 4 and 5 of Form 35 filed with the CIT(A)] claimable in relation to license income.

3.2. The learned CIT(A) erred in directing the AO to allow only direct expenditure incurred in

3.3. The learned AO and CIT(A) failed to appreciate that all expenses incurred wholly and exclusively for the purposes of earning the income are to be allowed, direct or indirect, as per provisions of section 57(iii) of the Act.

4. Grounds relating to interest under section 234B

4.1. The learned AO and CIT(A) erred in levying interest under section 234B amounting to Rs. 1,00,371. The appellant denies its liability to pay interest under section 234B.

These two appeals for Assessment Years 2013-14 and 2014-15 will be disposed hereunder:-

5. Ground No.1(Assessment Years 2013-14 and 2014-15)

5.1 This ground (supra), being general in nature, no adjudication is called for thereon and the same is therefore dismissed as infructuous.

**6. Ground No.5 (Assessment Year 2013-14) } Charge of interest under
Ground No.4 (Assessment Year 2014-15) } section 234B of the Act.**

6.1 In this ground (supra), the assessee denies himself liable to be charged interest u/s 234B of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H. Ghaswala (252 ITR 1) (SC) and I, therefore, uphold the action of the AO in charging the assessee the aforesaid interest u/s 234B of the Act. The AO is, however, directed to re-compute the interest chargeable u/s 234B of the Act, if any, while giving effect of this order.

7. Ground No.4 (Assessment Year 2013-14) – Disallowance of donation

7.1 In this ground (supra), the assessee assails the action of the CIT(A) in not adjudicating the ground relating to double disallowance of donation of Rs.1,80,000/- which was raised by the assessee as ground No.8 of Form 35 filed before the CIT(A).

7.2 After having heard both parties in the matter and carefully perusing the impugned order, we find that the CIT(A) has not adjudicated the ground No.8 raised by the assessee in the appeal before him for Assessment Year 2013-14. In these circumstances, we restore this issue of disallowance of donation to the file of the CIT(A) with a direction to examine and adjudicate the issue raised in ground No.8 of assessee's appeal in Form No.35 filed before him. Needless to add, the assessee shall be afforded adequate opportunity of being heard and to file details / submissions required, which shall be considered before deciding the issue. We hold and direct accordingly. Consequently, ground No.4 of assessee's appeal for Assessment Year 2013-14 is allowed for statistical purposes.

8. **Ground No.2** - **Treatment of Licence Fees as Income**
(Assessment Years **from House Property or Income from**
2013-14 & 2014-15) **Other Sources**
- Ground No.3** - **Disallowance of Expenses**
(Assessment Years
2013-14 & 2014-15)

8.1 At the outset of the hearing, it was brought to notice of the Bench that the identical issue had come up for consideration in the assessee's own case for Assessment Years 2005-06 to 2010-11 and was decided by a Co-ordinate Bench of the Tribunal in its order in ITA Nos.324 to 328/Bang/2014 dated 03.11.2016. We find that the aforesaid decision (supra) has been followed by another bench of this Tribunal in the assessee's own case for Assessment Year 2011-12 in ITA No.87/Bang/2017 dated 04.06.2018 wherein at paras 9 to 11 it has held as under:-

9. At the time of hearing, it was brought to our notice that identical issue had come for consideration in assessee's own case for assessment year 2005-06 to 2010-11 in ITA No.324 to 328/Bang/2014 and this Tribunal by its order dated 3/11/2016 decided identical issues. The Tribunal captured the issues for consideration as follows:-

10. The Tribunal finally concluded by holding as follows:-

"19. For the years AY 2007-08 to 2010-11, the learned counsel for the appellant submitted an alternate argument of the income from license fee being classified as income from house property. An additional ground was filed before the CIT(A) along with a petition for admission of additional evidence. Detailed submissions were made in support of this alternate ground. It was submitted before the CIT(A) that the character of license fees income had changed since AY 2008-09. It was submitted that at the time of entering to license agreement the possession of building was given along with facilities to IHC. In the year 2007, the hotel commenced a major renovation work which involved overhaul of amenities and facilities at the hotel property. The General Manager of Gateway Hotel (IHC) wrote a letter to the appellant informing that the renovation work in the hotel would commence from 1.5.2007 and was expected to be completed by October 2007. As the renovation commenced, the discardation of old assets was already over. Effectively, only building remained. In the course of renovation, the assets and facilities at the hotel property already having been used for a long time were replaced and refurnished. Consequently, the assets and facilities provided by the appellant were no more present in the hotel premise. The license fees thus represented consideration towards bare letting out of hotel property. These aspects were evident in written submission to additional grounds of appeal. These submissions along with relevant correspondence from IHC are at pages 249 to 265 of the paper book for AY 2007-08. However, no mention was found in the appellate orders issued by the CIT(A) on this additional ground and the submissions made there under.



20. The appellant vide its note dated 16.11.2015 submitted that for AY 2012-13 and 2013-14, it had filed its return of income by considering the license fee income as 'Income from house property'. The manner of offering such income has not been varied by the department. Further, scrutiny assessment was initiated for AY 201213 and an order under section 143(3) was issued whereby the income classification and computation carried out by the appellant was accepted.

21. In this background, we direct the CIT(A) to examine this additional ground of appeal and adjudicate accordingly in this matter.

22. It was submitted that the appellant commenced the Boutique Hotel business at Chennai under the name and style "The Hive" on 1. 11 .2007 (i.e AY 2008-09). Various expenses were incurred in relation to such business. Business income characterization was never in dispute. Bifurcation of expenses was provided in the written submissions attached in the following page numbers of the respective paper books:

AY-2008-09 ... Page 5

AY 2009-10 ... Page 5

AY 2010-11 ... Page 7

23. Bonafide business expenses incurred by the appellant should be wholly allowed in accordance with Chapter IV-D, particularly section 37. Accordingly, the CIT(A) is directed to examine these expenditures and adjudicate accordingly.

24. On analysis of (i) the nature of activities carried on by the appellant; and (ii) the impugned change in factual aspects submitted by the appellant, the CIT(A) is directed to reckon the characterization of license fees income (whether income from other sources or income from house property). The claim of expenses should be allowed based on the head of income so determined. If the income is reckoned to be income from other sources, the allowability of expenses must be determined based on the principles of section 57 outlined in our order above; judicial precedents available in the appellant's own case and the assessment with respect to subsequent years. In the alternative, if

the license fees income is reckoned to be income from house property, only a statutory deduction of 30% of net annual value be allowed. No other deduction of expenses related to license fees income should be permitted."

11. It can be seen from the aforesaid order of the Tribunal in Assessee's own case, identical issue as raised by the Assessee in this appeal viz., (i) Allowability of expenditure claimed by the appellant under Section 57 ; and (ii) Income characterization (whether license fee should be categorized as income from other sources or house property income) and allowability of expenditure claimed by the appellant was considered by this Tribunal and similar issue was remanded to the CIT(A) for consideration afresh. We are of the view that since the facts and circumstances and the issue involved in the present appeal is identical to the issue decided by the Tribunal in the order referred to above, the order of the CIT(A) should be set aside and remanded to the CIT(A) for fresh consideration by the CIT(A) as indicated in the order of the Tribunal referred to above. The appeal of the assessee is accordingly treated as partly allowed for statistical purposes.

8.2 Respectfully following the decision of the Co-ordinate Benches of this Tribunal in the assessee's own case for Assessment Years 2005-06 to 2010-11 in ITA Nos.324 to 328/Bang/2014 dated 03.11.2016 and for Assessment Year 2011-12 in ITA No.87/Bang/2017 dated 10.04.2018, we are of the view that since the facts and circumstances and the issue involved in the present appeals are identical to the issue decided by the Co-ordinate Benches of this Tribunal in the orders referred to above, the orders of the CIT(A) on this issue for Assessment Years 2013-14 and 2014-15 are to be set aside and restored to his file for fresh consideration; as directed in the Tribunal's orders in the assessee's own case

(supra). Consequently, grounds 2 and 3 of assessee's appeal are partly allowed for statistical purposes.

9. In the result, the assessee's appeals for Assessment Years 2013-14 and 2014-15 are allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of July, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 23rd July, 2019.

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Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.