

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Ms. Sushma Chowla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 4083/Del/2016 : Asstt. Year : 2012-13**

Income Tax Officer, Ward 41(1), New Delhi.	Vs	Sachdeva Hospitality, 12/57, West Punjabi Bagh, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABJFS1413K</b>		

**Assessee by : Dr. Rakesh Gupta, Adv.**

**Revenue by : Sh. Saras Kumar, Sr. DR**

**Date of Hearing: 06.01.2020**

**Date of Pronouncement: 21.02.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT (A)-14, New Delhi dated 18.05.2016.

2. Following grounds have been raised by the Revenue:

*"1. On the facts and circumstances of the case & in law, the Ld. CIT(A) is not justified in deleting the addition made by the Assessing Officer under the head income from House Property amounting to Rs. 3,44,40,000/- without appreciating the findings of the AO.*

*2. On the facts and circumstances of the case & in law, the Ld. CIT(A) is not justified in allowing the deduction claimed u/s 80ID of the Act of Rs. 2,19,94,920/- by accepting the hotel income under head business and profession.*

*3. On the facts and circumstances of the case & in law, the Ld. CIT(A) is not justified in directing the AO to assess the hotel income under the head income*

*from business and profession instead of Income from House Property by ignoring the definition of 'business' provides in section 2(13) of the Act without considering the one of the agreement conditions whereby minimum guarantee fees would be received by the assessee."*

3. The moot issue relates to disallowance the deduction claimed by the assessee u/s 80ID of the Income Tax Act, 1961 on the grounds that the receipts of the assessee amounts to rental charges from the hotel but not the business income sine the entire hotel operations are conducted by M/s Peppermint Hotel with whom the assessee entered into an agreement for running of the hotel.

4. The facts and arguments of the case in appeal are as under:  
The assessee has entered into an agreement with M/s Peppermint Hotels India (P) Ltd. (PHPL) as per which PHPL was to render professional services to the assessee for running the hotel as per copy of agreement enclosed in the paper book. That as per the agreement, the assessee was to pay Base Management Fee to PHPL and further Incentive Management Fee after PHPL achieved an assured basic minimum operative profit of Rs.41,00,000/- per month. The assessee started hotel operation from July 2010.

5. The revenue held that the assessee is not operating the business of running of the hotel but it has given the premises for lease to PHPL and hence the amount received by the assessee is not eligible for deduction u/s 80ID of the Act. The revenue has gone through the agreements entered by the assessee and came to conclusion that the hotel, in fact, is being run by the agreement holder.

6. The Id. CIT (A) deleted the addition made by the Assessing Officer.

7. Before us, during the arguments, the Id. DR relied on the clauses of the agreement between the assessee and PHPL which are as under:

*"The extracts of Hotel operation Agreement are reproduced as under; (i.e. Peppermint Hospitality India Ltd.) for your reference.*

*1. The owner wishes to engage the operator to manage and operate the Hotel under the operator's Brand name/ Trade Mark/ Logo " PEPPERMINT HOTEL GURGOAN" and the operator agrees to manage and operate the Hotel.*

*2. The Operator shall supervise and direct the operations of the Hotel and shall have, within the limits stipulated in the Agreement, complete and exclusive control and discretion over the operation of the Hotel and all operating plans including use of space and facilities, prices, entertainment and amusement policies, labours policies, wage rates, hire and discharge of employees and all phases of promotion, publicity and advertising.*

*3. The Operator shall operate the Hotel and all its facilities and activities in the same manner as is customary and usual in the operation of other similar hotels including supervisory services provided by operators of Hotels of comparable class and standing consistent with the Hotel's facilities.*

*4. The Owner agrees to cooperate to the fullest extent with the Operator in applying for, obtaining and maintaining such licenses and permits.*

*5. The Operator shall have full discretion and control in the operation of the Hotel.*

*6. The Operator shall maintain or cause to be maintained all records and registers and shall submit or cause to be submitted to appropriate authorities all information, reports, etc. as are legally obligatory on the Operator, and/or the Owner.*

*7. The Operator shall procure and appropriate expert on or before the Opening Date, a disaster management plan/safety manuals which include details of the plans and procedures to be exercised in emergency situations aimed at reducing the loss of life and property. The details of the disaster*

*management plan shall be specifically designed to adapt and comply with the requirements of the Hotel in an emergency situation and the Operator shall put in place policies aimed at ensuring that the employees of the Hotel are fully trained in accordance with the disaster management plan to handle emergency situations. Operator shall cause the Hotel to participate in and comply with all risk management, compliance and audit programs and procedures as applicable to the Hotel and generally similar to the ones adopted in other hotels owned or managed by the Operator. Operator shall always keep Owner indemnified from all risks and consequences including third party claims, all liabilities, civil, criminal or financial including all prosecutions arising out of any act of omission and commission by the Operator in execution, operation, management or supervision of the Hotel.*

*8. The Operator would ensure that at all times the Actual Expenses do not cross the limit set in Budgeted Expenses(month wise) and the Hotel may function efficiently, and smoothly in the manner therein contemplated, and the Operator shall ensure that all payments to be made by the Operator hereunder are promptly made as and when they fall due.*

*9. The Operator shall arrange and contract for all advertising and promotion, which Operator may deem necessary for successful operation of the Hostel.*

*10. The Operator shall provide Technical Services and related Know- How to the Owner at every pre-opening stage and thereafter operate, manage, supervise and run the Hotel diligently and professionally in commensuration with national/ International standards of similar establishment and Hotels. Operator, besides other shall provide following services.*

*(i) Meet with Operator and Consultants, and review Design Brief, Operating Criteria, Designs Standards and review Consultant's responsibilities, sources of Direction, budget control reporting functions, etc.*

*(ii) Provide detailed assistance and guidance to specialists consultants, i.e. kitchen and laundry designers for the*

*development of the house areas, including offices, maintenance, housekeeping etc.*

*(iii) Review and guide on detailed layout drawings of all Hotel back of the houses areas, including offices, maintenance, housekeeping etc.*

*(iv) Attend all design development meeting as required to develop the documents in a concise and orderly manner.*

*11. Operator has Net Minimum Guarantee "MG" Gross operating profit at Rs.4100000/-, should the achieved Gross operating profit for the month be below Rs 4100000/-, the operator shall reimburse the shortfall to the owner.*

*On going through the agreement and more specifically as apparent from the clauses of agreement mentioned above.*

*I have observed that the essence of the agreement is that you will receive a minimum sum of Rs 41.00 lacs p.m. towards utilization of your property by Peppermint throughout the year. The entire operations are controlled by Peppermint and you basically receive amount towards rent/lease charges. Further , as per records submitted before me you have received a sum of Rs. 270,163,06/- towards shortfall in Gross operating Profit also which further proves that the basic character of your net receipts is rent/lease charges which are received through the complex method of calculation of the same which has been camouflaged to show as business receipt."*

8. The Id. DR concluded that what the assessee received was only the rental amounts for utilization of the property and compensation towards short fall in the gross operating profit.

9. On the other hand, the Id. AR argued that what PHPL providing is primarily in the nature of consultancy and professional services and it cannot be deemed that the entire operations have been relegated to PHPL. It was argued that all the receipts of the hotel from guests are credited to the bank account of the assessee, the cheques, credit cards and other

receipts. All expenses are paid from the bank account in the name of the assessee. All sale invoices also reflect the name of the assessee. He relied on the Article 12 of the agreement which state that during the term of the agreement the hotel shall .....be known and designated as Peppermint Hotel, Gurgaon or such name selected by the owner from time to time...

It was argued that the service tax registration, VAT registration, Labour department registration, PF registration and ESIC registration are all in the name of the assessee. The VAT returns, the luxury tax return, service tax return have been filed in the name of the assessee.

10. Heard the arguments of both the parties and perused the material available on record.

11. In addition to the facts narrated above, we also find that the liquor license issued by the Collector-cum-Excise & Taxation Commissioner is in the name of the assessee and so as the NOC for bar license, sanitary certificate and public performance license. The copy of the bank statement reflects the receipts and payments out of the assessee account. The labour department registration is in the name of the assessee and all the employees are on the role of the assessee firm and PF liable to is also tagged to the assessee being the employee. All the TDS certificates are received in the name of the assessee firm wherever applicable. We have also given our attention to the judgment of Co-ordinate Bench in the case of Jai Mahal Hotel Pvt. Ltd. 65 ITD 362 (Del.). The relevant analysis is at para 13 to 19 of the order which is as under:

*"13(a) That the term "business" as defined in s. 2(13) are of very wide import and it must be construed in a broad rather than in a restrictive sense. Such a view is clearly fortified by the provisions contained in s. 2(13) as well as the judgments reported in Mazagaon Dock Ltd. vs. CIT (supra), CIT vs. A. Dharma Reddy (Decd) (1969) 73 ITR 751 (SC), CIT vs. Calcutta National Bank Ltd. (supra) and CEPT vs. Shri Lakshmi Silk Mill Ltd. (supra).*

*(b) The distinct heads of income specified in s. 14 of the Act are mutually exclusive. The income derived from different sources falling under specific heads has to be computed for the purpose of taxation in the manner provided by the appropriate section. If the income from a source falls within the specific head set out in s. 14, the fact that it may indirectly be covered by another head will not make the income chargeable under the latter head.*

*(c) A commercial asset can be exploited in many ways. So long as a commercial asset is exploited as such and profits and gains earned from it, the same are profits and gains of a business. In order to decide whether income arising due to exploitation of commercial assets would be assessable as income from business or as income from other sources one will have to examine the terms of agreement by which the commercial asset was exploited by letting out the same to others. For this purpose it will have to be ascertained whether the business of the assessee was entirely closed or the letting out of the commercial asset for a temporary period was made for profitable mode of exploitation of the said commercial assets. The intention of the parties, either expressed or gathered from the circumstances may provide a guiding test in the matter. If in giving commercial assets of a business by way of a licence to other party, the intention of the licensor-owner is to go out of the business altogether, it will not be assessable as income from business. But if the intention of the licensor-owner is to continue in the said business, the income would be assessable as income from business. Whether a particular letting is business has to be decided on the facts and circumstances of each case. Each case has to be looked at from the businessman's point of view to find out whether the letting was the exploitation of commercial assets in a more profitable manner or such a letting out of the commercial assets resulted in a permanent closure of assessee's business.*

**14.** *We will, therefore, have to examine the fact of the present case in the light of the aforesaid legal principles deduced from the various judgment cited by the learned representatives of both sides.*

**15.** *It is an undisputed fact that the erstwhile firm was carrying on the business as hotelier in the same premises. The appellant-company was incorporated in the year 1981 with the main objects of carrying on business of hotel and restaurant. The company initially started the business in the partnership with two other partners under the name and style of M/s Jai Mahal Hotel. Copies of assessment orders of the said firm submitted in the compilation shows that the said firm had suffered a loss of Rs. 18,000 in asst. yr. 1982-83 and loss of Rs. 38,250 in asst. yr. 1983-84. The preamble of the agreement executed between the appellant-company and IHC reveals that IHC possessed expertised resources and infrastructure, covering, inter alia, highly developed technology in the field of hotel-tourists understanding, the need of Indian and foreign tourist and travellers and meeting them through specialised techniques particularly in the context of hotel business and other hotel related services.*

**16.** *A careful scrutiny of various clauses of the said agreement executed between the appellant-company and IHC reveals that the said agreement was executed with the predominant motive of exploiting the hotel building and its fixtures in a more profitable, organised and a systematic manner. It is well-known that IHC is a company owning all the Taj groups of hotels and they have a long experience and expertise in carrying on the business of hotels. They are fully conversant with the modern technology and specialised skill required for running and managing five star hotels. The agreement in question was made effective from June, 1984. The period of this agreement was 60 years commencing from the appointed date which was 2nd June, 1984. For the first 5 years the appellant-company was entitled to minimum guaranteed business profits of Rs. 35 lakhs i.e. Rs. 7 lakhs per annum. Thereafter the minimum guaranteed business profits was agreed to be increased periodically from Rs. 10 lakhs per annum to Rs. 55 lakhs per annum as stipulated in cl. 3.4 of the said agreement. The assessee was entitled to 1 per cent share in the gross operating profits of the aforesaid minimum guaranteed business profits whichever is higher as per the aforesaid clause. It is evident from the aforesaid clause that the appellant-company while ensuring minimum guaranteed business profits had also retained the right to receive 1 per cent share in the gross operating profit, if it is more than the minimum guaranteed business profit.*

*The termination clauses authorises the appellant-company to terminate this agreement by giving 30 days notice of termination in a situation prescribed under cl. 14.1. The said agreement also provides that on the expiry of this agreement by efflux of time, the entire property including the immovable assets, fixed assets including electrical wiring, water services, sanitary fittings, all fittings attached to the building etc. introduced by the IHC will revert back to JMHL automatically without payment of any compensation whatsoever to IHC. These clauses indicate that the appellant company entered into a long-term business agreement with IHC to ensure that their hotel is managed and run in a profitable manner by a company which possesses rich experience in this line and which has an established name in the field of running five star hotel in the country. The company also ensured minimum guaranteed business profits as a result of exploitation of their commercial assets by entering into such an agreement with IHC. The said agreement also clearly reveals that the company did not give up its intention to carry on the hotel business at its own. In the event of failure on the part of IHC to act in accordance with the terms of the agreement, the appellant-company had the liberty to terminate the said agreement by giving 30 days notice and in that event the entire assets brought into existence by IHC by way of fittings in the said hotel building will revert back to the appellant-company. This clearly shows that the appellant-company had all intentions to run the hotel at its own in the event of termination of the said agreement for any reason whatsoever.*

**17.** *The memorandum of association of the company also permit exploitation of commercial assets belonging to the assessee in such a manner. A reference of various clauses of memorandum of association has already been given in earlier parts of this order which shows that the company was entitled to carry on the business of running a hotel in any manner including by entering into any kind of arrangement or agreement with any other firm or company engaged in this line of business.*

**18.** *It is evident from the aforesaid discussions that in the instant case, the intention of the assessee was never to go out of hotel business but the company had all the intentions to very much continue the business. The intention of entering into the contract with IHC was that the offer given by IHC was*

*found to be more lucrative and profitable. The company as a prudent businessman thought that by entering into such an agreement with IHC for a long term, it will ensure minimum guaranteed business profits as well as it will be entitled to retain 1 per cent share in the operating gross profit, whichever is higher. The past experience of running a hotel by the erstwhile firm was not a happy experience. The firm incurred loss by running the hotel in those very premises. The company by entering into the said agreement not only obviated the possibility sustaining loss in the future but it ensured the minimum guaranteed business profit for the entire duration of the said agreement. Apart from this the IHC had undertaken to make various improvements, add furniture and fixtures, incur substantial expenditure for beautifying the hotel keeping in view the need of the tourists. All such fittings and fixtures made in the hotel building will revert back to the appellant-company at the time of termination of the contract. This aspect was also one of the considerations on account of which a long-term licence was granted to IHC. Such clauses in the aforesaid agreement and the material brought on record clearly show that the assessee never abandoned the whole idea of conducting the hotel business on its own. On the other hand, the termination clause clearly indicate that in case IHC does not implement the various terms of the agreement, the appellant-company will be entitled to terminate the said agreement and will be able to run the hotel at its own.*

**19.** *Considering the totality of the facts and circumstances we are clearly of the opinion that the income derived by the assessee by way of licence-fee received from IHC is assessable to tax under the head 'profits and gains of business' and not under the head 'income from other sources'. The order passed by the CIT(A) as well as by the ITO taking such a view are, therefore, set aside. The AO is directed to compute the said income as assessable under the head 'profits and gains of business' and not under the head 'income from other sources'."*

12. The facts were akin to the issue before us. Keeping in view, the facts of the instant case that the entire material operations are being undertaken by the assessee and all the statutory requirements or complied by the assessee. All the receipts and payments pertaining to the

operations of the hotel are being managed through the bank account of the assessee, we hereby hold that the assessee is in the business of running of hotel and accordingly, the provisions u/s 80ID of the Act are applicable to the case of the assessee in the instant year.

13. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 21/02/2020.

Sd/-

**(Sushma Chowla)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 21/02/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**