

आयकरअपीलीयअधिकरण , 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A " BENCH, CHENNAI**

श्री जॉर्जमाथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2294/Chny/2019

निर्धारण वर्ष/Assessment Year : 2014-15

Assistant Commissioner of Income
Tax,
Corporate Circle 6-(OSD),
Chennai.

M/s. Sunstar Hotels & Estates Pvt.
Ltd.,
No. 16/3, Vidyodaya 1st Street,
T Nagar, Chennai 600 017.

[PAN: AALCS 5478E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. A R V Sreenivasan, JCIT

प्रत्यर्थीकीओरसे/Respondent by

: Shri. D. Anand, Advocate

सुनवाईकीतारीख/Date of Hearing

: 19.12.2019

घोषणाकीतारीख/Date of Pronouncement

: 09.03.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The Revenue filed this appeal against the order of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No. 198/18-19/CIT(A)-15 dated 31.05.2019 for assessment year 2016-17.

2. M/s. Sunstar Hotels and Estates Pvt. Ltd., the assessee started in financial year 2005-06 with the main object on engaging in hotel business. However, this business never took till assessment year 2010-11 and therefore, there was no business activity. In the assessment year 2012-13, the assessee started finance activity and offered net taxable income after claiming certain expenditure towards interest on borrowed capital, salary to directors etc. The AO while making the assessment for assessment year 2016-17 disallowed certain expenditure u/s. 37(1). Further, he has disallowed on account of foreign travel expenditure u/s. 37(1) r.w.s. 57(3) as done in the earlier assessment years. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) following this tribunal decision in the assessee's case for assessment year 2012-13 in ITA No. 1242/Chny/2017 dated 27.08.2018, directed the AO to allow the entire expenditure claimed by the assessee.

3. Aggrieved, the Revenue filed this appeal with the following grounds of appeal:

"1. *The order of the Ld. CIT(A) is contrary to the law and facts of the case.*

2. *The Ld. CIT(A) erred in deleting the disallowance of expenditure u/s. 36(1)(iii) of the Act of Rs. 28.23 lakhs by relying on the order of the Hon'ble Tribunal in ITA No. 1242/Chny/2017 dated 27.08.2018 for assessment year 2012-13 in the assessee's own case, decided in favour of the assessee.*

3. *The Ld. CIT(A) erred in deleting the disallowance of expenditure u/s. 37(1) r.w.s. 57(iii) of the Act of Rs. 4.93 crores by relying on the order of the Tribunal in ITA no. 1242/Chny/2017 dated 27.08.2018 for assessment year 2012-13 in the assessee's own case, decided in favour of the assessee.*

3.1 *The Ld. CIT(A) erred in holding that the assessee business was of provision of financial services and hence held that the pre-commencement expenses were allowable.*

3.2 *The Ld. CIT(A) ought not to have allowed entire business expenditure against interest income without examining the nature of expenses as also the facts and circumstances of the case.*

4. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored."*

The Ld. DR presented the case on the above lines and argued the case. Per contra, the Ld. AR submitted that the Ld. CIT(A) following the order of the tribunal allowed the assessee's appeal. Following the principle of judicial discipline, the Ld. AR pleaded that the Revenue's appeal may be dismissed.

4. We heard the rival submissions and gone through the relevant material. We find that the Ld. CIT(A) has also taken cognizance of the fact that during the assessment year 2016-17, the assessee has changed the main object as business and removed the object of hotel business from the Memorandum of Association. The relevant portion of the order of the ITAT relied on by the assessee, supra, is extracted as under:

"6. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is abundantly clear that during the relevant assessment year, the assessee was only engaged in the business of financial services though the main objects in the Memorandum of Association was Hotel Business. It is pertinent to mention that the ancillary objects in the Memorandum of Association also permitted the assessee company to carry on the business of financial services. In the process the assessee company had deployed its fund towards earning interest income because during the relevant assessment year the assessee company did not commenced activities with respect to Hotel Business. Since the business of the assessee company during the relevant assessment year was only financial services, the income earned during the relevant assessment year ought to be assessed as business income and the entire expenditure incurred by the assessee for earning such income has to be allowed as deduction. Needles to mention, nothing on record is before us to suggest that the assessee company was indulging in any other business activity during the relevant assessment year. Therefore we are of the considered view that the expenditure incurred by the assessee towards salary for Rs.1,50,00,000/- has also to be allowed as deduction while computing the business income of the assessee for the relevant assessment year. Accordingly we hereby direct the Ld.AO to delete the addition of Rs.1,50,00,000/- sustained by the Ld.CIT(A).

7. In the result the appeal of the assessee is allowed."

Since, there is no substantial change in the facts and law and Ld. CIT(A) having followed the order of the ITAT, supra, we do not find any reason to interfere with the order of the Ld. CIT(A) and hence, the Revenue's appeal is dismissed.

5. In the result, the Revenue's appeal is dismissed.

Order pronounced on Monday, 09th March, 2020 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 09th March, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त अपील(/CIT(A))
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF