

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A" : NEW DELHI]
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
A N D
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA. No. 5037/Del/2015
Assessment Year : 2008-09.

Deputy Commissioner of Income Tax,
Circle : 2,
Gurgaon.

M/s. Intercontinental Hotels
Group (India) Pvt. Ltd.,
11th Floor, Unitech Cyber Park,
Netaji Subash Marg,
Sector – 39, Gurgaon.

PAN : AAGCS7613G

(Appellant)

(Respondent)

Assessee by : Shri S. K. Aggarwal, C. A.;

Department by : Shri R. K. Gupta, Sr. D. R.;

Date of hearing : 07/10/2020.

Date of order : 04/11/2020.

ORDER

PER SUCHITRA KAMBLE, JM :

This appeal is filed by the Revenue against the order dated 30.03.2015 passed by the Commissioner of Income Tax (Appeals)-4, New Delhi, for assessment year 2008-09.

2. The Revenue has raised the following grounds of appeal :-

“ 1. On the facts and in the circumstances of the case and also in law, the ld. CIT (Appeals) has erred by deleting the addition of Rs.17,90,806/- on account of professional & Consultation fee.

2. On the facts and in the circumstances of the case and also in law, the Id. CIT (Appeals) has erred by deleting the addition of Rs.1,40,69,932/- made by Assessing Officer on account of advertisement and sale promotion.

3. On the facts and in the circumstances of the case and also in law, the Id. CIT (Appeals) has erred by deleting the addition of Rs.1,33,40,751/- on account of loss on waiver of loans.

4. That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal. “

3. The assessee is engaged primarily in the business of providing ancillary management support services to its overseas group entity, Six Continents Hotels Inc., USA ('SCHI') and services relating to management and operation of hotels in India and providing technical support services to hotels in India. The ancillary management support services are rendered to its overseas group companies with respect to hotels based in the South-West Asia region viz. India, Pakistan, Bangladesh and Sri Lanka under a service agreement with Six Continents Hotels Inc., USA. Under the agreement the assessee is remunerating on a cost plus basis i.e. 10% mark up in Assessment Year 2008-09 on all cost incurred by rendering such services. The ancillary management support services being rendered by assessee company and Six Continents Hotels in USA includes various types of services. The assessee also receives Management Fee under hotel management agreements entered into with various Indian hotel companies for operation and management of hotels owned by such companies. Further the assessee also received technical service fee from Indian hotels during the previous year relevant to Assessment Year 2008-09. During the assessment proceedings the Assessing Officer observed that the assessee claimed following expenses which were Revenue in nature:-

(i) Payment to Control Risk Group	Rs.10,26,022/-
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- (ii) Consultancy fee for office space Rs.3,91,116/-
- (iii) Payment made for Patent & Trademark Rs.8,21,170/-

The assessee informed the Assessing Officer that the payment for Control Risk study was for study of the financial soundness and past track records and such report is used by the assessee company to deal with the target hotels for brand management as per assessee's standard. Similarly Consultancy fee paid was in the nature of brokerage for getting office space on rent. Thirdly, with regard to the payment made to Rs.2,21,170/- shown under the head 'payment made for patent and trademark' was in the nature of legal charges in infringement proceedings. The Assessing Officer was of the view that such payment would have given enduring benefit to the assessee. The Assessing Officer also held that the above expenses as capital in nature and, therefore, disallowance of 80% of such expenses amounting to Rs.17,90,806/- was made. The Assessing Officer also made disallowance of advertisement and space promotion towards Rs.1,40,69,933/- and also the disallowance of waiver of loan amounting to Rs.2,61,86,927/-.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT (Appeals) and the CIT (Appeals) allowed the appeal of the assessee.

5. The Ld. Departmental Representative submitted that the CIT (Appeals) erred in deleting the addition of Rs.17,90,806/- on account of low professional and consultation fee. As regards deletion of addition of Rs.1,40,59,932/- on account of advertisements and sale promotion was also incorrect. The learned DR further submitted that deleting the addition of Rs.1,33,40,751/- on account of loss on waiver

If loans was also not correct on behalf of the CIT (Appeals). The learned DR relied upon the assessment order.

6. The Ld. Authorized Representative submitted that in Assessment Year 2007-08 ground Nos. 1 and 2 of Revenue's appeal which were identical in this year have been decided in favour of the assessee. As regards ground No. 3 of the Revenue's appeal the learned AR relied upon the order of the CIT (Appeals).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that as regards addition of Rs.17,90,806/- on account of professional and consultation fees the CIT (Appeals) has given a categorical finding that the issue had come up in the assessment proceedings for Assessment Year 2007-08 which was decided by the Tribunal vide order dated 8.02.2013 and there is no deviation of any facts in the present assessment year as well. The CIT (Appeals) has rightly observed that the assessee availed services to control this group 'SCHI' in order to carry out the due diligence and risk analysis with the target hotels. Thus, these expenses are Revenue in nature. Thus, ground No. 1 of the Revenue's appeal is dismissed.

8. As regards ground No. 2, the CIT (Appeals) has again relied upon the Tribunal's decision in Assessment Year 2007-08. It is pertinent to note that advertisement and sale promotion expenses are Revenue expenses as held in Assessment Year 2007-08 in assessee's own case. and there is no different facts emerging in present assessment year which are identical to the said assessment year 2007-08. Therefore, ground No. 2 of the Revenue's appeal is dismissed.

9. As regards ground No. 3 the CIT (Appeals) has given a finding that the assessee converted the outstanding demand of Rs.1,43,91,892/- into un-secured loans non-interest bearing and had also advanced further loan of Rs.6,55,95,000/- as interest bearing secured loan and another amount of Rs.1,74,92,000/- as interest-free unsecured loan to M/s GLH Hotels, Mumbai ('GLH') which is not a related party in order to help the latter to repay the dues of Vijaya Bank and towards working capital loan in its business respectively. It is evident that in order to safe-guard its financial interest the assessee closed the credit facility for which settlement took place between the assessee and the borrower M/s. GLH. As a result of such a settlement the assessee was able to recover its dues including interest receivable which were discounted at 9.5% to arrive at a NCB and in the said process the assessee incurred a net loss of Rs.1,33,40,751/-. This loss has been already offered for taxation in the relevant assessment years. Thus, the CIT (Appeals) has rightly deleted the said addition and there is no need to interfere with the findings of the CIT (Appeals). Ground No. 3 of the Revenue's appeal is dismissed.

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

Order pronounced in the open court on : 04/11/2020.

**Sd/-
(G. S. PANNU)
VICE – PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

DATED : 04/11/2020.
MEHTA

Copy forwarded to:-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.11.2020.
Date on which the typed draft is placed before the dictating Member	04.11.2020.
Date on which the typed draft is placed before the Other Member	04.11.2020.
Date on which the approved draft comes to the Sr. PS/PS	04.11.2020.
Date on which the fair order is placed before the Dictating Member for pronouncement	04.11.2020.
Date on which the fair order comes back to the Sr. PS/PS	04.11.2020.
Date on which the final order is uploaded on the website of ITAT	04.11.2020.
Date on which the file goes to the Bench Clerk	04.11.2020.
Date on which the file goes to the Head Clerk	