

**आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**JODHPUR BENCH**

**माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. Nos.488 to 494/Jodh/2017  
(निर्धारणवर्ष / Assessment Years: 2008-09 to 2014-15)

<b>Sir Pratap Heritage Hotels Pvt.Ltd.</b> 1, Amarkantak Road Dhanpuri, Shahdol Madhya Pradesh-484 114.	<b>बनाम/ Vs.</b>	<b>ACIT– Central Circle-1</b> Jodhpur Rajasthan
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAJCS-4923-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Ms. Raksha Birla (CA) & Shri Rajendra Jain (Advocate)–Ld.ARs.
<b>Revenue by</b>	:	Shri K.C. Badhok- Ld. CIT- DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	06/11/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21/12/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1.1 Aforesaid appeals by assessee for Assessment Years [in short referred to as 'AY'] 2008-09 to 2014-15 contest separate orders of learned first appellate authority. However, all these assessments stem from common search proceedings. Facts as well

as issues are stated to be *pari-materia* the same in all the years. Therefore, adjudication in any one year shall apply equally to all other years also. We take up the facts and issues of AY 2008-09, ITA No.488/Jodh/2017 as the lead year

1.2 The appeal by assessee for AY 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2, Udaipur, [in short referred to as 'CIT(A)'], Appeal No.50/2016-17, dated 19/09/2017 on following effective grounds: -

1.1 In the facts and circumstances of the case and in law, the Ld. CIT(A)-2, Udaipur erred in confirming the additions made by AO in his order passed u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 ("the Act") dt. 27.03.2016 for the relevant assessment years as same is bad in law and deserve to be deleted since the same are not based on any incriminating material unearthed during the course of search.

1.2 Without prejudice to the above, it is respectfully submitted that CIT(A) - 2 Udaipur erred in confirming the order passed by AO as same bad in law and deserves to be quashed for want of jurisdiction since no incriminating material whatsoever was unearthed for the relevant assessment year during the course of search and as such without any incriminating material no order could have been passed by the Ld. AO.

2. In the facts and circumstances of the case and in law, the Ld.CIT (A) -2 erred in confirming the addition and failed to appreciate that the impugned order passed by the Ld. AO is bad in law and void for want of jurisdiction since the assessment order is passed by AO u/s 153A is without issuing the jurisdictional notice u/s 143(2) of the Act within the time provided under the Act.

3. The Learned CIT-appeal, erred in facts, in law and under the circumstances of case by confirming disallowance of business expenses of Rs.8,42,298/- by observing that no business is commenced during the year.

3.1 The learned CIT(A) failed to appreciate that assessee is not the owner of the immovable property and also failed to appreciate that the existing/old hotel taken by the assessee on lease was for running hotel business after repairing/renovating the same hence, appellant had duly commenced the its business therefore, all the repairing expenses and other expenses incurred to maintain corporate status are allowable as business expenses.

3.2 The learned CIT(A) erred in observing that expenses incurred by the Appellant are prior period expenses hence same not allowable as business expenses.

3.3 The Learned CIT(A) fail to appreciate that the Learned AO duly accepted the interest income as business income, hence expenses claimed are deductible.

Sir Pratap Heritage Hotels Private Limited.  
Assessment Years: 2008-09 to 2014-15

3.4 Assessee submit that the Learned CIT(A) fail to appreciate that expenses incurred for business purpose cannot be denied merely because the business is temporarily abandoned during the year due to litigation with lessor/owner of the property.

4. In the facts & circumstance of case and in law, the Ld.AO failed to allow set-off of B/F losses of earlier years.

1.3 The Ld. Authorized Representative for the assessee (AR), at the outset, drawing our attention to Ground Nos. 1 & 2 challenged the validity of assessment proceedings by submitting that since no incriminating evidence / material was found during the course of search, the additions would not be sustainable under law. The assessment proceedings for the year are stated to be unabated assessment proceedings. The Ld. CIT-DR relied upon the findings of lower authorities.

1.4 We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. The judicial pronouncements as cited have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

2.1 The material facts are that the assessee being resident corporate assessee was assessed for the year under consideration u/s. 153 r.w.s. 143(3) on 27/03/2016. While framing assessment, it was saddled with disallowance of certain expenses for Rs.8.44 Lacs. The assessment proceedings stem from search operations u/s 132 carried out by the department on Vinod Purohit group of cases on 16/04/2013 wherein several incriminating documents along with cash, jewelery and other valuables were stated to be found / seized from various premises searched by the department.

2.2 The original return of income was filed by the assessee on 04/09/2008 and the same was processed u/s 143(1). Apparently, no existing assessment proceedings were pending at the time of search action on 16/04/2013.

2.3 In response to notice u/s 153A dated 10/01/2014, the assessee filed return of income on 17/03/2014. Notices u/s 143(2) & 142(1) along with questionnaire was issued on 07/08/2015 wherein the assessee was directed to file requisite details.

2.4 Upon perusal of details so filed, it transpired that the assessee had not started any business during the year and therefore, the business expenditure was of Rs.13.31 Lacs claimed against interest income was not to be allowed. The interest income was to be assessed under 'Income from Other Sources'. Although, the assessee justified the deduction of expenditure, however, Ld. AO held that only interest expenditure of Rs.4.86 Lacs having direct nexus with earning of interest income was to be allowed and the balance expenditure was to be disallowed. Accordingly the assessment was framed after disallowing the balance expenditure.

3.1 Before Ld. CIT(A), the assessee took a stand that assessment was bad in law since the additions were not based on any incriminating material unearthed during the course of search proceedings. Reliance was placed, inter-alia, on the decision of Hon'ble Bombay High Court in **CIT V/s Continental Warehousing Corporation (Nhava Sheva) Ltd. 2015 374 ITR 645** as well as **Gurinder Singh Bawa 2016 386 ITR 418** and the decision of

Hon'ble Delhi High Court in **CIT V/s Kabul Chawla 61 Taxmann.com 412.**

The Ld. CIT(A), noticing the provisions of Sec.153A, opined that Ld.AO was duty bound to assess or reassess the total income of 6 assessment years. The total income will cover not only the income emanating from declared sources but from all sources including undisclosed ones. For the same, analogy was drawn from decision of Hon'ble Rajasthan High Court in **Jai Steel V/s ACIT 2013 259 CTR 281** which held that the word 'assess' has been used in the context of abated proceedings and the word 'reassess' has been used in the context of completed assessment proceedings. It was also noted that the revenue was under challenge by way of Special Leave Petition (SLP) against the favorable decision of Hon'ble Bombay High Court as well as Hon'ble Delhi High Court and therefore, the assessee's submissions could not be accepted. Accordingly, this ground was rejected.

3.2 Another legal ground taken was the fact that notice u/s 143(2) was not issued within the prescribed time of 12 months and the same would not be curable defect u/s 292BB and therefore, the assessment was liable to be set-aside. However, this ground was also rejected by Ld. CIT(A), inter-alia, by relying upon the decision of Hon'ble Delhi High Court in **Ashok Chaddha V/s ITO 337 ITR 399.**

3.3 On merits, Ld. CIT(A) upheld the stand of Ld. AO by observing that the business of hotel and restaurant had not commenced and therefore the expenditure could not be allowed.

Aggrieved as aforesaid the assessee is under further appeal before us.

4. Since the legal grounds taken before us goes to the root of the matter, the same are dealt with at the outset. From the facts, it emerges that the original return was filed by the assessee on 04/09/2008 and the search took place on 16/04/2013. Admittedly, no assessment proceedings were pending against assessee on the date of search and it was not a case of abated assessment. Upon perusal of the assessment order, it is quite evident that Ld. AO has not referred to any incriminating material against the assessee and the additions made therein are also not based on any incriminating material. The business expenditure claimed that is sought to be disallowed was already claimed in the original return of income. The facts of the case, in our considered opinion are squarely covered in assessee's favor by the decision of Hon'ble Bombay High Court in **CIT V/s Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015 374 ITR 645)** as well in **Gurinder Singh Bawa (2016 386 ITR 418)** which has held that in the absence of any incriminating material, the unabated assessments could not be disturbed. Similar is the view of Hon'ble Delhi High Court in **CIT V/s Kabul Chawla 61 Taxmann.com 412** which has summed up legal position as follows: -

*"Summary of the legal position:*

*37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under :*

- i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched*

Sir Pratap Heritage Hotels Private Limited.  
Assessment Years: 2008-09 to 2014-15

*requiring him to file returns for six A.Ys immediately preceding the previous year relevant to the A Y in which the search takes place.*

- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The A.O. will exercise normal assessment powers in respect of the six years previous to the relevant A.Y. in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs. "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.*
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each A Y on the basis of the findings of the search and any other material existing or brought on the record of the A.O.*
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the Course of search which were not produced or not already disclosed or made known in the course of original assessment.*

The view of Hon'ble Delhi High Court in **CIT V/s Kabul Chawla (supra)** has been followed by Hon'ble High Court of Rajasthan in **Pr.CIT V/s Smt. Daksha Jain (ITA No.125/2017 dated 04/07/2019)** which has declined to admit revenue's appeal.

Further, upon perusal of SLP No. 18560 of 2015 dated 12/10/2015 admitted by Hon'ble Supreme Court against the decision of Hon'ble Bombay High Court rendered in **CIT Vs. Continental Warehousing Corporation (supra)**, we find that Hon'ble Apex Court has only admitted Special Leave Petition (SLP) against the ruling of the Hon'ble Bombay High Court's finding that no addition can be made in respect of assessments which have become final if no incriminating material is found during search or during 153A proceedings. However, it is seen that the Hon'ble Apex Court has not stayed or suspended the operation of the decision of the Hon'ble Bombay High Court in any manner and therefore, at the moment, the cited decisions of various Hon'ble High Courts are binding on us.

The decision of Hon'ble Rajasthan High Court in **Jai Steel V/s ACIT 2013 259 CTR 281** only lays down that it would not be open for assessee to seek deduction or claim expenditure in assessment u/s 153A which has not been claimed in original assessment, which assessment already stands completed. The same are not the facts or issues here.

5. Respectfully following above decisions, we are inclined to set-aside the additions so made in the hands of the assessee in the assessment order. The ground thus raised stand allowed. Since we have allowed this legal ground and deleted the quantum additions *in toto*, the remaining grounds raised before us have been rendered merely academic in nature and therefore, not dealt with.

6. Resultantly, the appeal stands partly allowed in terms of our above order.

**ITA Nos.489 to 93/Jodh/2017, AYs: 2009-10 to 2013-14**

7. Facts are similar in all these years. The assessment has been framed u/s 153A r.w.s. 143(3) wherein the business expenditure as claimed by the assessee has been disallowed. The appellate orders are, more or less, on similar lines. Facts being pari-materia the same, our adjudication as for AY 2008-09 shall *mutatis mutandis* apply to all these years. The assessee succeeds on legal grounds and all these appeals stands partly allowed.

**ITA Nos.494/Jodh/2017, AY: 2014-15**

8. In this year, the assessment has been framed u/s 143(3) vide order dated 27/03/2016. The business expenditure of Rs.1.36 Lacs has been disallowed on the reasoning that the business had not been commenced. The Ld. CIT(A), in the light of assessee's financial statements as well as after going through the terms of lease agreement reached a conclusion that the assessee did not acquire the business premises on on-going business basis but simply took an old structure on lease. Further, it could not be said that there was a temporary dormancy / lull period for assessee's business. Therefore, the action of Ld. AO was upheld. Aggrieved, the assessee is in further appeal before us assailing the disallowance of expenditure.

9. Upon due consideration, we find that the premises was taken on lease since 2006 and the business could not be commenced by the assessee till AY 2014-15 which would substantiate the fact that

Sir Pratap Heritage Hotels Private Limited.  
Assessment Years: 2008-09 to 2014-15

there was not any temporary dormancy or lull period for the business. No fresh material has been placed before us to disturb these findings rendered by learned first appellate authority. However, in our considered opinion, the expenditure which was quite necessary to maintain assessee's corporate personality would be an allowable expenditure since without incurring the same, the assessee could not have remained into existence. Therefore, we direct Ld. AO to identify such expenditure and allow the same to that extent. The assessee is directed to furnish the requisite details, in this regard. For the said limited purpose, the issue stand restored back to the file of Ld. AO The appeal stands allowed for statistical purposes.

### **Conclusion**

10. ITA Nos. 488 to 493/Jodh/2017 stand partly allowed whereas ITA No.494/Jodh/2017 stand allowed for statistical purposes.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

**Sd/-**  
**(Sandeep Gosain)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020  
Sr.PS:-Jaisy Varghese

### **आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

Sir Pratap Heritage Hotels Private Limited.  
Assessment Years: 2008-09 to 2014-15

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, जोधपुर / ITAT, Jodhpur.**