

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

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)

1. आयकरअपील सं./ I.T.A. No.85/Jodh/2019
(निर्धारणवर्ष / Assessment Year: 2013-14)
&
2. आयकरअपील सं./ I.T.A. No.86/Jodh/2019
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
3. आयकरअपील सं./ I.T.A. No.141/Jodh/2019
(निर्धारणवर्ष / Assessment Year: 2015-16)

ACIT–Circle-1 Jodhpur Rajasthan.	बनाम/ Vs.	Shri Gaj Singh Umaid Bhawan Palace Jodhpur, Rajasthan.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AFMPS-5233-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

- &
4. C.O. No.08/Jodh/2019
(Arising out of ITA No.85/Jodh/2019)
(निर्धारणवर्ष / Assessment Year: 2013-14)
&
 5. C.O. No.09/Jodh/2019
(Arising out of I.T.A. No.86/Jodh/2019)
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
 6. C.O. No.13/Jodh/2019
(Arising out of I.T.A. No.141/Jodh/2019)
(निर्धारणवर्ष / Assessment Year: 2015-16)

Shri Gaj Singh Umaid Bhawan Palace Jodhpur, Rajasthan.	बनाम/ Vs.	ACIT–Circle-1 Jodhpur Rajasthan.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AFMPS-5233-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajiv Pandey and Ms. Dakshayani Pandey (CA)- Ld. ARs
Revenue by	:	Shri A.S. Yadav - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	04/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1.1 Aforesaid appeals by revenue for Assessment Years [in short referred to as 'AY'] 2013-14, 2014-15 & 2015-16 contest separate orders of learned first appellate authority. The assessee has filed cross-objections against the same. Facts as well as issues are identical in all the years and therefore, the appeals are being disposed-off by way of this common order for the sake of convenience & brevity. First, we take up appeal as well as cross-objection for AY 2013-14 which is against the order dated 11/12/2018 passed by Ld. Commissioner of Income-Tax(Appeals)-1, Jodhpur, [in short referred to as 'CIT(A)'], *Appeal No.275E/2016-17*.

1.2 The grounds raised by the revenue read as under:-

1. Whether on the facts and in the circumstances of the case, the CIT (A) is justified in ignoring the clauses 16,17&18 of the agreement between the assessee and licenses; and restricting the disallowance of expenses against income from Sardar Samand Lake Palace to Rs.2,00,000/- instead of Rs 5,00,000/- as disallowed by the AO?
2. Whether on the facts and in the circumstances of the case, the CIT(A) is justified in ignoring the clauses 5, 6 & 7 of the agreement between the assessee and licenses; and thereby, restricting the disallowance of expenses against income from Cannought House Hotel to Rs.1,75,000/- instead of Rs.8,80,800/- as disallowed by the AO?

3. Whether on the facts and in the circumstances of the case, the CIT (A) is justified in holding ALV of Mehrangarh Fort of Rs. 100/- only ?
4. Whether on the facts and in the circumstances of the case, the CIT (A) is justified in holding ALV of Desuri House of Rs. 21 only ?
5. Whether on the facts and in the circumstances of the case, the CIT (A) is justified in holding that the assessee being a majority shareholder in the company is not deriving any perquisite or benefit from provisions of his residence in the premises of the Hotel run by the company and thereby deleting addition of Rs.19,80,000/- made u/s 28(iv) ?
6. The Ld. CIT(A) has erred on fact and in law in deleting addition of Rs.35,50,908/- made by AO u/s 2(22)(e) of the IT Act and ignoring the colourable transaction of advance of loan by M/s Marudhara Hotels Pvt Ltd. to the assessee.

1.3 The assessee's cross-objections are primarily in support of the impugned order. The grounds read as under: -

1. The respondent submits that the deletion of Ld. CIT(A) are correct and as per law namely: -
 - deleting the addition made by Ld. AO with reference to Sardar Samand Lake Palace to Rs.5,00,000/- but erred in restricting the same to Rs.2,00,000/-. Further, the clause 16,17 & 18 of the agreement referred to in cross objection do not seem to be relevant.
 2. deleting the addition made by Ld. AO with reference to Cannought House, Mount Abu amounting to Rs.8,80,000/- but restricting the same to Rs.1,75,000/-. Further the clause 5,6 & 7 of the agreement referred to in cross objection are not applicable on the expenses incurred and allowed by Ld. CIT(A). The clause override the new agreement entered w.e.f. 1.4.2008 (business transfer agreement) do not seem to be relevant.
 3. In confirming ALV of Mehrangarh Fort to be Rs. 100/- only based on decision of Hon'ble Rajasthan High Court / and other authorities in assessee's own case.
 4. In confirming ALV of Desuri House to be Rs. 21 only based on decision of Hon'ble ITAT in assessee's own case.
 5. In confirming the deletion of Rs.19,80,000/- as alleged perquisite u/s 28(iv) based on decision of Hon'ble ITAT in assessee's own case which held that there was business nexus.
 6. In deleting the addition u/s 2(22)(e)- deemed dividend and in correctly interpreting that assessee has credit balance and further there are no accumulated profit and further holding the transaction to be genuine and not colorable.
 7. In deleting the addition u/s 2(22)(e)- deemed dividend amounting to Rs.35,50,908/- and giving credit of amount of security given.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated

upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 The assessee being resident individual and ex-ruler of Jodhpur was assessed for the year under consideration u/s 143(3) vide order dated 30/03/2016 wherein the income was determined at Rs.193.38 Lacs after certain additions / adjustment of recurring nature.

3.2 Certain recurring issues cropped up during the course of assessment proceedings which were as follows: -

(i) The assessee was being owner of Sardarsamand Lake Resorts, Pali earned leased rent of Rs.5 Lacs and after claiming various expenses, declared loss of Rs.12.78 Lacs. Following the findings in assessment order for AY 2012-13, the entire expenses were disallowed and entire lease rental of Rs.5 Lacs was brought to tax.

(ii) Similarly, the assessee reflected income of Rs.1.01 Lacs against Connaught House situated at Mount Abu. However, the entire expenses claimed were disallowed and lease rental of Rs.8.80 Lacs was brought to tax.

(iii) The assessee received advance of Rs.36.50 Lacs from an entity namely M/s Marudhar Hotels Pvt. Ltd. (MHPL) which was held to be deemed dividend u/s 2(22)(e) as held in AY 2012-13.

(iv) The assessee reflected rental income of Rs.100/- per annum in respect of Mehrangarh Fort. Similarly, it reflected rental income of Rs.21/- per annum from Desuri House. Following assessment order for AY 2012-13, the income from these properties were taken at Rs.160.11 Lacs & Rs.5.20 Lacs respectively.

(v) The assessee was residing in a portion of Umaid Bhawan Palace which is owned by M/s Marudhar Hotels Pvt. Ltd. (MHPL). The accommodation was rent free. Following assessment order for AY 2012-13, the rent was estimated at Rs.19.80 Lacs and added to the income of the assessee as perquisite u/s 28(iv).

It is evident that all the issues were of recurring in nature and Ld. AO chose to frame the assessment as made in earlier years.

4. Upon further appeal, Ld. CIT(A) sustained a sum of Rs.1.75 Lacs & Rs.2 Lacs out of Rs.8.80 Lacs & Rs.5 Lacs as disallowed by Ld. AO against property situated at Sardarsamand Lake Resorts and the property situated at Connaught House respectively to cover up the possible leakages. Accordingly, the ground was partly allowed.

This estimation was in line with estimations made in appellate order for AY 2012-13 which were confirmed by Tribunal vide common order ITA Nos.148 to 150/Jodh/2016 for AYs 2010-11, 2011-12 & 2012-13 order dated 27/06/2017.

We concur with the findings of Ld. CIT(A) that the estimations so made were in accordance with appellate orders for earlier years. The revenue's appeal as well as cross objections were dismissed by the coordinate bench of this Tribunal vide para 6.4 of the order dated 27/06/2017. Therefore, the impugned order does not call for any interference, in this regard. The ground thus raised in revenue's appeal as well as assessee's cross-objections stand dismissed.

5.1 Regarding addition of deemed dividend u/s 2(22)(e), it was contended that advance of Rs.36.50 Lacs as made by M/s MHPL was towards security deposit and keeping in view the business

expediency. The Ld. CIT(A), in the background of decision of Hon'ble Supreme Court in **P.K.Badani V/s CIT 105 ITR 642**, observed that M/s MHPL incurred losses of Rs.202.99 Lacs during the year and therefore, the provisions of Sec.2(22)(e) would not apply. Further, the deposit given to the assessee on account of guarantee given on behalf of the company exceeded the advance which has business nexus and therefore, there would be no deemed dividend. Aggrieved, the revenue is in further appeal before us.

5.2 Upon perusal of Balance Sheet of M/s MHPL, we find that though the company has incurred losses during the year, however, it has accumulated reserves of Rs.58.45 Crores which, inter-alia, includes Capital reserve, Capital redemption reserve, revaluation reserve, general reserve, investment allowance and accumulated profits. Therefore, the observation of Ld. CIT(A) that there were no accumulated reserves is an erroneous finding. We do not concur with the same.

5.3 We find that in AY 2010-11, an addition of Rs.25.25 Lacs has been confirmed by the Tribunal since the advances were found to be given for assessee's personal expenditure. Similarly in AY 2012-13, the Tribunal has confirmed additions to the extent of Rs.171.38 Lacs being advance given for personal guarantee as well as advance to meet the personal expenditure. These transactions were held to be not business transactions and therefore, the additions u/s 2(22)(e) were confirmed.

5.4 In assessee's submissions before Ld. CIT(A), it was stated that the assessee has given personal guarantee of Rs.29.10 Crores

on behalf of M/s MHPL. On account of the same, the assessee has obtained security from the company and therefore, the same had business nexus. The loans & advances are stated to be given for security deposit of Vintage cars given for display and use by M/s MHPL to be used by VIP and tourists. The assessee has also tabulated the specific heads under which the advances have been received / repaid. However, all these facts have remained to be considered by Ld. CIT(A).

5.5 In the background of aforesaid facts, we find that in this year none of the lower authorities have examined the nature & purpose of advances received by the assessee. The determination of those facts would be vital for adjudication of this issue since certain findings have been rendered by the Tribunal in AYs 2010-11 & 2012-13. Therefore, on the facts & circumstances, we deem it fit to restore this issue back to the file of Ld. CIT(A) to bring on record factual matrix and re-adjudicate the same in the light of our observations as well as keeping in mind the decision of Tribunal in AYs 2010-11 & 2012.13. This ground stand allowed for statistical purposes.

6. The ALV of the Mehrangarh Fort as well as Desuri House for Rs.100/- & Rs.21/- were accepted in terms of decision of this Tribunal for AYs 2007-08 to 2009-10, ITA Nos.83, 84 & 7/Jodh/2013 common order dated 21/06/2013. The relevant extract from that order has already been reproduced in the impugned order. Similar favorable view was taken in first appellate order for AY 2012-13 and the Tribunal dismissed revenue's appeal, on this

issue, vide ITA No.148 to150/Jodh/2016 common order dated 27/06/2017.

It is quite evident that Ld. CIT(A) has merely followed the binding judicial precedents in the shape of Tribunal's order in assessee's own case for earlier years. There is nothing on record which would indicate that those decisions are not applicable. No change in facts has been demonstrated before us during the year. Therefore, impugned order would not require any interference, on these issues. Accordingly, the revenue's grounds stand dismissed.

7. The addition u/s 28(iv) on account of rent free accommodation was deleted by following the order of Tribunal for AYs 2007-08 to 2009-10, ITA Nos.83, 84 & 7/Jodh/2013 common order dated 21/06/2013. The relevant extract from that order has already been reproduced in the impugned order. Similar favorable view was taken in by Tribunal in AYs 2010-11 to 2012-13 vide ITA Nos. 148 to 150/Jodh/2016 common order dated 27/06/2017. Aggrieved, the revenue is in further appeal before us.

It is quite evident that Ld. CIT(A) has merely followed the binding judicial precedents in the shape of Tribunal's order in assessee's own case for earlier years. There is nothing on record which would indicate that those decisions are not applicable. No change in facts has been demonstrated before us during the year. Therefore, impugned order would not require any interference, on these issues. Accordingly, the revenue's grounds stand dismissed.

8. In nutshell, Ground Nos.1 to 5 of revenue's appeal stand dismissed. Ground No.6 stand allowed for statistical purposes. Rest of the grounds is general in nature. Ground Nos.1 to 5 of

assessee's cross-objection is only in support of impugned order and therefore, would not require specific adjudication on our part. Ground Nos.6 & 7 is related with deemed dividend u/s 2(22)(e), which matter stood restored back to the file of Ld.CIT(A). Accordingly, these grounds stand dismissed. Rest of the grounds is general in nature. The revenue's appeal stand partly allowed for statistical purposes whereas assessee's cross-objections stand dismissed in terms of our above order.

Assessment Year 2014-15

9. Facts as well as issues are identical in this year. An assessment was framed u/s 143(3) on 28/12/2016 wherein business income from Cannought House, Mount Abu and Sardar Samand Lake Palace, Pali was determined in similar manner. The ALV if Mehrangarh Fort as well as Desuri House was estimated on similar lines. The assessee was also saddled with addition u/s 28(iv) for Rs.21.78 Lacs. The addition u/s 2(22)(e) were made for Rs.166.83 Lacs. The impugned appellate order is on similar lines and follows similar logic & reasoning. Aggrieved, the revenue is under further appeal before us whereas the assessee's cross-objections are substantially in support of impugned order.

Since facts are *pari-materia* the same, except addition u/s 2(22)(e), as in AY 2013-14, our adjudication therein shall *mutatis mutandis* apply to the this year also.

10.1 The addition u/s 2(22)(e) are on two account – (i) Rs.26.53 Lacs received by the assessee from M/s MHPL & (ii) Rs.140.30 Lacs received by the assessee's proprietorship concern namely M/s Majestic Stadia from M/s MHPL.

10.2 The addition has been so made by Ld. AO under both the heads since it was opined that there was no business nexus of the transactions. The Ld. CIT(A) has deleted additions under both heads apparently by following Tribunal orders for AYs 2011-12 & 2012-13. The relevant extract of the order has already been reproduced in the impugned order.

10.3 Upon careful consideration of material on record, we find that the adjudication in para 17.3 of Tribunal order for AY 2011-12 [as relied upon by Ld. CIT(A)] was in relation to the transactions between M/s MHPL on one hand and another corporate entity namely M/s Stadium Hotels Private Limited (SHPL) on the other hand. However, in this year the transactions are different i.e. between M/s MHPL and proprietorship concern of the assessee i.e. M/s Majestic Stadia. Hence, Ld. CIT(A), in our opinion, has erred on facts and failed to take note of nature & purpose of advances received by the assessee under both the heads. The determination of those facts would be vital for adjudication of this issue. Therefore, as in AY 2013-14, we deem it fit to restore this issue back to the file of Ld. CIT(A) to bring on record factual matrix and re-adjudicate the same as per law. The revenue's ground thus stand allowed for statistical purposes.

11. The revenue's appeal stand partly allowed for statistical purposes whereas assessee's cross-objections stand dismissed in terms of our above order.

Assessment Year 2015-16

12. Facts as well as issues are identical in this year. An assessment was framed u/s 143(3) on 26/12/2017 wherein

business income from Cannaught House, Mount Abu and Sardar Samand Lake Palace, Pali was determined in similar manner. The ALV if Mehrangarh Fort as well as Desuri House was also estimated on similar lines. The assessee was also saddled with addition u/s 28(iv) for Rs.26.25 Lacs. However, there is no addition u/s 2(22)(e) and this issue does not crop-up this year.

13. The impugned appellate order is on similar lines and follows similar logic & reasoning. Aggrieved, the revenue is under further appeal before us whereas the assessee's cross-objections are substantially in support of impugned order.

14. Since facts are pari-materia the same on all the issues as in AY 2013-14, our adjudication therein shall *mutatis mutandis* apply to the this year also. Consequently, the revenue's appeal as well as assessee's cross-objections stand dismissed in terms of our above order.

Conclusion

15. The revenue's appeal for AYs 2013-14 & 2014-15 stands partly allowed for statistical purposes. The revenue's appeal for AY 2015-16 as well as all the cross-objections stand dismissed.

*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 ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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