

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.2695/Del/2016
(ASSESSMENT YEAR 2006-07)**

M/s Sunair Hotels Ltd. A-7, First Floor, Geetanjali Enclave, New Delhi-110 017 PAN -AAACS 1463L (Appellant)	Vs.	ACIT, Circle-24(1), New Delhi. (Respondent)
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**ITA No.3864/Del/2016
(ASSESSMENT YEAR 2006-07)**

DCIT, Circle-24(2), New Delhi. (Appellant)	Vs.	M/s Sunair Hotels Ltd. A-7, First Floor, Geetanjali Enclave, New Delhi-110 017. PAN -AAACS 1463L (Respondent)
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Appellant By	Sh. Vinod Kumar Bindal, CA & Ms. Rinku Sharma, CA
Respondent by	Sh. Prakash Dubey, Sr. DR
Date of Hearing	27.01.2021
Date of Pronouncement	29.01.2021

ORDER**PER SUDHANSHU SRIVASTAVA, JM:**

ITA No.2695/Del/2016 is the appeal of the assessee against order dated 29.02.2016 passed by the Learned Commissioner of Income Tax (Appeals)-2, New Delhi {CIT (A)} for Assessment Year 2006-07, whereas ITA No.3864/Del/2016 is the Department's Cross Appeal for the same year.

2.0 The brief facts of the case are that the assessee company is engaged in the running of a five star Hotel in Delhi and is also carrying on investment and consultancy business. During the year under consideration, the assessee company also has income from house property. The return of income was filed declaring the net taxable income at Nil. The assessee's case was picked up for scrutiny. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had shown gross rent from house property at Rs. 5,10,67,771/- and had claimed deduction for repairs at the rate 30% amounting to Rs.1,53,20,331/-. The Assessing officer noted that the assessee had entered into a service agreement with Mitsui & Company Ltd. vide

agreement dated 29.10.1997 for letting out of a commercial center at Bangla Sahib Road, New Delhi. The Assessing Officer further noted that the agreement included service charges also and that the benefit of 30% of deduction was allowable only in respect of rental receipts. The Assessing Officer further noted that identical issue had come up in the immediately preceding Assessment Year also and in that Assessment Year also the Assessing Officer had held that the benefit of deduction would not be available in respect of service charges. Following the same reasoning, the Assessing Officer made a disallowance of Rs.69,88,677/-. Further, the Assessing Officer also noted that an amount of Rs.75,67,763/- had been debited under legal and professional charges and the assessee was asked to provide details/vouchers of the same. The Assessing Officer noted that an amount of Rs.37,62,006/- had been paid towards litigation charges and professional fees which could not be said to be incurred wholly for the purposes of the business of the assessee. The Assessing Officer proceeded to disallow this amount of Rs.37,62,006/- being professional fees for defending various cases filed by M/s. VLS Finance Ltd. and Others. The Assessing

Officer also proceeded to withdraw depreciation amount of Rs.92,79,120/- by observing that this was excess depreciation in view of the block assessment order passed u/s 158-BC of the Income Tax Act, 1961 (hereinafter called 'the Act') vide order dated 29.11.2002.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging these disallowances. The Ld. CIT (A) upheld the disallowance pertaining to rental income amounting to Rs.69,88,677/- as well as the disallowance pertaining to legal and professional charges. However, the Ld. CIT (A) deleted the disallowance pertaining to depreciation.

2.2 Aggrieved by the order of the Ld. CIT (A) now both the assessee as well as Department is in appeal before this Tribunal and the respective grounds raised by them are as under:

Grounds of appeal by the assessee in ITA No.2695/Del/2016

"1. The learned CIT (A) erred in law and on facts in confirming disallowance of 30% deduction for repairs u/s 24 amounting to Rs. 65,27,520/- on rental income received by the appellant by holding that the relevant income was service charges and not rent since there was a separate service agreement between the appellant and the tenant, while ignoring the lawful explanation of the appellant that the impugned service agreement was a part of the rent agreement only. Thus, the lawful deduction

claimed by the appellant should be allowed by following the appellate order for the preceding assessment years by the Hon'ble ITAT.

2. The learned CIT (A) erred in law and on facts by directing the AO to add u/s 69C of the Act the amount of expenses incurred in providing some services to the tenant though no such sum was spent and without giving any show cause notice to the appellant to explain the same. Thus, the said direction should be reversed.

3. The learned CIT (A) erred in law and on facts in disallowing litigation fees of Rs. 19,59,861/- by stating that the same was not incurred wholly and exclusively for the purpose of business, while ignoring the facts and lawful explanation of the appellant that the said litigation expenses were incurred for defending cases filed against the appellant company challenging its operations and, thus, interfering in the functioning of its business. Thus, the litigation expenses were incurred wholly and exclusively for the business purpose of the appellant company and should be allowed fully.

4. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.

Grounds of appeal by the Revenue in ITA No.3864/Del/2016

“1. Whether the Ld. CIT (A) was justified in deleting the addition made by the AO on account of disallowance of depreciation.

2. The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”

3.0 At the outset, the Ld. Authorized Representative (AR) submitted that all the disallowances are covered by the order of the

Tribunal in assessee's own case for earlier Assessment Years. He drew our attention to orders of the Tribunal in assessee's own case for earlier Assessment Years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 and submitted that these issues were recurring issue and had been settled in favour of the assessee by the various orders of the Tribunal as aforesaid.

4.0 Per contra, the Ld. SR. Departmental Representative (DR) vehemently supported the order of the Ld. CIT (A) on the issue of disallowances pertaining to rental income and legal and professional charges as upheld by the CIT (A) and placed reliance on the order of the Assessing officer in respect to the disallowance of depreciation but deleted by the Ld. CIT (A). The Ld. Sr. DR also fairly accepted that the Departmental appeal was liable to be dismissed *in limine* in view of it being below the monetary limit for filing of appeals before the Tribunal.

5.0 We have heard the rival submissions and have also perused the material on record. As far as the issue pertaining to disallowance of deduction of 30% with respect to income from

house property is concerned. It is seen that this issue has been settled in favour of the assessee by this Tribunal in Assessment Year 2007-08 in ITA No.2729/Del/2010 vide order dated 20.08.2010. We also note that this order was later followed by this Tribunal in Assessment Years 2009-10 and 2010-11 in ITA Nos.4450 & 4451/Del/2012 respectively. The issue under consideration in respect of the disallowance pertaining to income from house property is identical to earlier Assessment Years and there being no change in facts and circumstances, we see no reason to uphold the disallowance as upheld by the Ld. CIT (A). We also note that the identical issue was decided in favour of the assessee and against the Revenue in earlier orders of the Tribunal in ITA No.3737, 3738 & 3739/Del/2006 for Assessment Years 2001-02, 2002-03 & 2003-04 vide order dated 27.06.2008. The copies of all these orders have been placed before us and no contrary material or any higher Court's orders have been placed on record to show that such earlier orders of the Tribunal have been reversed by any higher forum. Therefore, following the precedents as cited above in assessee's own case, we set aside the order of the Ld. CIT (A) on the

issue and direct the deletion of disallowance amounting to Rs.69,88,677/-.

5.1 Coming to the second issue under challenge by the assessee i.e., pertaining to disallowance of legal and professional fees, we note that this issue is also covered in favour of the assessee and against the Revenue by orders of this Tribunal in assessee's own case for Assessment Years 2001-02, 2002-03 & 2003-04 in ITA Nos.3737, 3738 & 3739/Del/2016 vide order dated 27.06.2006. This order of the Tribunal was later followed by other Co-ordinate Benches of this Tribunal in Assessment Years 2004-05, 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13, the copies of which have been filed in the paper book submitted by the assessee. On this issue also the orders of the Tribunal have attained finality in as much as no order of higher judicial forum reversing these orders of the Tribunal has been brought to our notice. Accordingly, respectfully following the order of the Tribunal in earlier assessment years as aforesaid in assessee's own case and on identical facts, we set aside the order of the Ld. CIT (A) on the

issue of disallowance of legal and professional charges and direct the deletion of the same.

6.0 Coming to the Department's appeal challenging the deletion of disallowance of depreciation by the Ld. CIT (A), we note that this issue is also covered in favour of the assessee and against the Revenue by the order of the Tribunal in assessee's own case for earlier Assessment Years. The issue has been decided in favour of the assessee right from Assessment Years 2001-02 to Assessment Years 2012-13 and on this issue also there has been no reversal of the order of the Tribunal by any higher judicial forum. Thus, this issue has also attained finality. Respectfully following the same, we uphold that action of the Ld. CIT (A) in deleting this disallowance of depreciation amounting to Rs.92,79,120/-. We further note that the appeal of the Department is liable to be dismissed otherwise also as the disputed tax is much below the prescribed monetary limit for filing of appeals before the Tribunal. Accordingly, the Department's appeal stands dismissed.

7.0 In the final result, the appeal of the assessee stands allowed and the appeal of the Department stands dismissed.

Order pronounced on 29th January, 2021

Sd/-

(DR.B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 29/01/2021

PK/Ps

Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI