

**IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH, KOLKATA**  
(श्री ए.टी. वर्की, न्यायिक सदस्य)  
[Before Shri A. T. Varkey, JM]

**I.T.A. No. 159/Kol/2020**  
Assessment Year:2011-12

Apeejay Surrendra Park Hotels Ltd. (PAN:AAACB7961L)	Vs.	Deputy Commissioner of Income-tax, Central Circle-III, Kolkata.
Appellant		Respondent

Date of Virtual Hearing	01.02.2021
Date of Pronouncement	05.02.2021
For the Appellant	Shri Manish Tiwari, AR
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR

**ORDER**

This is an appeal preferred by the assessee against the order of the Ld.CIT(A)-21, Kolkata dated 19.12.2019 for AY 2011-12.

2. The only ground that has been raised by the assessee is against the action of Ld. CIT(A) in confirming the disallowance of Rs.56,28,718/- claimed by the assessee as amortization expenditure of leasehold land.

3. At the outset, the Ld. AR of the assessee Shri Manish Tiwari drew our attention to the fact that this issue is squarely covered in assessee's own case by the decision of the Tribunal in earlier assessment years i.e. AYs 2009-10 and 2012-13. According to Ld. AR, the assessee had made a payment of Rs.13.94 cr. for gaining control over the property which was necessary to their smooth running of its hotel business. Therefore, the expenses claimed was amortized and expenditure was claimed from AY 2003-04 onwards which was allowed throughout by the AO u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the "Act") from AY 2004-05 to 2008-09 by passing scrutiny assessment orders u/s. 143(3) of the Act. The Ld. AR drew our attention to the respective assessment orders passed by AO u/s. 143(3) of the Act placed in the paper book which relates to AY 2004-05

to 2008-09. However, the AO in AY 2009-10, disallowed the claim by holding the expenditure as Capital in nature. The Ld CIT(A) reversed the action of AO and allowed the claim of assessee. On further appeal by the Revenue, the Tribunal was pleased to uphold the action of Ld. CIT(A) wherein he applied the principle of consistency since there was no change in facts or law permeating in all the previous assessment years, by order dated 03.07.2015 in ITA No. 12/Kol/2013 in ACIT Vs. M/s. Apeejay Surrendra Park Hotels Ltd., wherein the Tribunal held as under:

*“3. We have heard the rival submissions and carefully considered the same along with the order of tax authorities below. We noted that the assessee has made the similar claim in the assessment years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 and the Assessing Officer while making the assessment under section 143(3) accepted the claim of assessee vide respective orders dated 18.12.2006, 31.12.2007, 26.12.2008, 15.12.2009 and 31.12.2010. there is no change in the facts during the impugned assessment year. The Assessing Officer, in our opinion, is bound to follow the Rule of Consistency until and unless either the law has been amended. It is not denied that the facts involved in this year are similar to the facts involved in those years. No doubt the principles of res judicate are not applicable in the income tax proceedings as each of the assessment years is an independent assessment year, but there must be substantial ground for the revenue to differ if the view taken by the Assessing Officer in the preceding assessment year. Our aforesaid view is duly supported by the decision of the Hon’ble jurisdictional High Court in the case of CIT Vs., Hindusthan Motors Limited reported in 192 ITR 619. We, therefore, respectfully following the decision of the Hon’ble jurisdictional High Court confirm the order of CIT(Appeals) in respect of the Ground no.1 delete the addition of r.58,66,864/-.”*

4. And according to the Ld. AR this view has been reiterated by the Tribunal in assessee’s own case for AY 2012-13 by order dated 29.01.2020 a copy of which is placed at pages 5 to 8 of the paper book. In the aforesaid facts and circumstances, he pleads that since there is no change in facts or law, the view of the Tribunal in assessee’s own case on identical facts and circumstances should be followed and allow the assessee’s appeal.

5. Per contra, the Ld. DR supported the action of the Ld. CIT(A) and does not want me to interfere. However, on a pointed question from the bench to the Ld. DR as to whether there was any change in facts or law which could have allowed me to take a different view, the Ld. DR fairly conceded that there is no change in facts or law in this assessment year *vis a vis* previous assessment years.

6. Heard rival submissions and gone through the facts and circumstances of the case. The aforesaid stated facts are not repeated for the sake of brevity. It is an admitted fact that

assessee had incurred an expenditure of Rs.13.94 cr. for gaining control over the property which was necessary to their smooth running of its hotel business, which expenditure was amortized and claimed as revenue expenditure; and which was allowed by AO from AYs 2003-04 to AY 2008-09; and thereafter in AY 2009-10 the AO took a view that the amount was capital in nature and disallowed the same which view was reversed by the Ld. CIT(A) and the revenue's appeal against the action of the Ld. CIT(A) got dismissed and the Tribunal was pleased to uphold the action of the Ld. CIT(A) thereby allowing the claim of the assessee (supra). This view of the Tribunal has been followed in assessee's own case by the coordinate bench for AY 2012-13 also. Even though res judicata is not applicable for income tax proceeding, however, rule of consistency as a principle has been upheld by the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs CIT (193 ITR 321), wherein the Hon'ble Supreme Court has held that if the facts permeating in the earlier years are the same and there is no change in facts and law, then the view taken earlier should not be disturbed by applying the principle of rule of consistency. This view has also been endorsed by the Hon'ble jurisdictional High court in the case of CIT Vs. Hindusthan Motors Ltd. 192 ITR 619. Therefore, following the judicial discipline the Division Bench order of this Tribunal in assessee's own case for AYs 2009-10 and 2012-13 are binding on me and need to be followed and, therefore, I am inclined to allow the appeal of the assessee and reverse the impugned order of Ld. CIT(A) and allow the amortization expenditure of Rs.56,28,718/- claimed by the assessee.

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

Order is pronounced in the open court on 5<sup>th</sup> February, 2021.

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 5<sup>th</sup> February, 2021

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Apeejay Surrendra Park Hotels Ltd. 17, Park Street, Kolkata-700016.
2. Respondent – DCIT, CC-III, Kolkata.
3. CIT(A)-21, Kolkata (sent through e-mal)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (sent through e-mal)

/True Copy,

By order,

Assistant Registrar