

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 152/Kol/2019
Assessment Year: 2013-14**

**Shailraj Hotels Private Limited.....Appellant
[PAN: AAEC3921 K]**

Vs.

DCIT, Circle-8(2), Kolkata.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Sh. Supriyo Paul, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : February 24th, 2021

Date of pronouncing the order : March 24th, 2021

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)-3, Kolkata, [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 29.10.2018 for the Assessment Year 2013-14.

2. The facts of the case are as follows:

"The assessee company filed its Returns of Income showing total income of Rs. 62,49,380/-. The Return was selected for scrutiny and accordingly Notices u/s 143 (2) & 142 (1) were issued. The assessee duly complied with the said Notices through Authorized Representative. During the year, the assessee company was engaged in the business of hotels, rest houses, guest houses, holiday resorts, restaurants, coffee houses etc. and for which it had entered into Joint Venture Agreement with Canadian Company for setting up a hotel in Canada in the F.Y. 2012-13. The Ld. A.O. has omitted to mention this facts in the Assessment Order and held that there was no business activity during the F.Y. 2012-13 and disallowed the entire expenses of Rs. 20,11,017/- claimed in the Profit & Loss account under the following heads:

<i>i) Employee Benefits Expenses</i>	<i>Rs. 8,95,210/-</i>
<i>ii) Depreciation and amortisation expenses</i>	<i>Rs. 84,821/-</i>
<i>iii) Other Expenses</i>	<i>Rs. 10,30,986/-</i>
<i>Total</i>	<i>Rs. 20,11,017/-</i>

During the year, the assessee company earned interest income of Rs. 82,33,920/- on the Funds set apart for investment in the business of the company as the company had entered into JVA with Canadian Company for setting up a hotel in Canada. Thus the interest income earned on funds set apart for business purpose has the character of business income and not income from other Sources as held by the Ld. A.O. It is therefore submitted that all the expenses disallowed by the Ld. A.O. as stated above are allowable business expenses incurred wholly and exclusively for the purpose of business of the assessee company."

3. On appeal, the Id. CIT(A) applied the decision of the Hon'ble Calcutta High Court in the case of *Ritz Continental Hotels Ltd. vs. CIT (114 ITR 554)* and adjudicated the issue against the assessee. Aggrieved, the assessee is in appeal before us.

4. After hearing rival contentions, we find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Calcutta High Court in the case of *CIT vs. Ganga Properties Ltd. [1992] 62 Taxman 285 (Calcutta)* wherein it is held as follows:

*"7. In our view, a limited company, even if it does not carry on business, even if it derives income from other sources, has to maintain its establishment for complying with statutory obligation so long it is in operation and its name is not struck off the register or unless the company is dissolved which means cessation of all corporate activities of the company for all practical purposes. So long as it is in operation, it has to maintain the status as a company and it has to discharge certain legal obligations and for that purpose it is necessary to appoint clerical staff and secretary or accountant and incur incidental expenses. In this background, the conclusion of the Tribunal that the expenses incurred were wholly and exclusively for the activities to earn income is pre-eminently a reasonable conclusion. We have considered a similar case in *CIT vs. New Savan Sugar & Gur Refining Co. Ltd. [IT Reference No. 360 of 1979, dated 19-4-1989]*."*

4.1. The Id. Counsel for the assessee did not press the ground that the income in question should be assessed under the head 'income from business only'. Thus, we uphold the order of the AO that the interest income in question is assessable under the head 'income from other sources'.

4.2. We also find that the judgement relied upon by the Id. CIT(A) in the case of *Ritz Continental Hotels Ltd.* (supra) is not applicable to the facts of this case as in that case, the Hon'ble High Court of Calcutta was considering the issue whether the hotel business of the assessee was 'set up' or 'not'. The issue as to whether the business is 'set up' or 'not' does arise in this case.

5. Thus respectfully following the judgement of the Hon'ble High Court in the case of *Ganga Properties Ltd.* (supra), we direct the AO to allow deduction of the expenses claimed by the assessee during the year.

6. In the result, the appeal of the assessee is allowed in part.

Kolkata, the 24th March, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 24.03.2021

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Shailraj Hotels Private Limited, R.O.: R-192, Greater Kailash-I, New Delhi-110 048.
B.O.: 4E, 411, Premises No. 155, Lenin Sarani, Kolkata-700 013.***
2. ***DCIT, Circle-8(2), Kolkata.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

Sd/-
[J. Sudhakar Reddy]
Accountant Member

By order

Assistant Registrar
ITAT, Kolkata Benches