

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 61/Del/2018
(Assessment Year : 2014-15)

India Tourism Development Corporation Ltd., Core-8, 6 th Floor, Scope Complex, 7, Lodhi Road, CGO Complex, New Delhi	Vs.	ACIT Special Range – 4, New Delhi
PAN No. AAACI 0825 J		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri R. S. Singhvi, CA Shri Satyajeet Goel, Adv.
Revenue by	Ms. Anima Baranwal, Sr. DR.

Date of hearing:	17.08.2021
Date of Pronouncement:	25.08.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 23.10.2017 passed by the Commissioner of Income Tax (Appeals) – 35, New Delhi for Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a public sector company and is stated to be engaged in the business of running hotels and restaurants. Assessee filed its return of income for Assessment Year 2014-15 on 29.11.2014 declaring total income of Rs.13,13,20,480/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) vide order dated 23.11.2016 and the total income was determined at Rs.23,74,57,000/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 23.10.2017 granted partial relief to the assessee. Aggrieved by the order of the AO, assessee is now in appeal before us and has raised following grounds:

- 1(i) *“That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding disallowance to the extent of Rs. 8,80,09,000/- being claim of business loss even though the same is in accordance with Accounting Standard-4 issued by ICAI.*
- (ii) *That the loss is on account of order of Hon’ble Delhi High Court and same being in respect of old litigation arising in regular course of business pending on the balance sheet date, the impugned disallowance is illegal, arbitrary and in total disregard to settled accounting principles.*
- (iii) *In any case, in absence of any dispute regarding genuineness and correctness of claim of business loss, there is no case of any disallowance as per settled legal and accounting principles.*
2. *In the alternative, the assessing officer may be directed to allow the claim in the succeeding year i.e. AY 2015-16*
3. *That the order of lower authorities is not sustainable on facts and same is bad in law.*

4. *That the appellant craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice."*

4. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to disallowance of claim of business loss of Rs.8.80 crore (rounded off) and alternative ground is that the loss if not allowed in the year under consideration then it be allowed in A.Y. 2015-16.

5. During the course of assessment proceedings, AO on perusing the Profit and Loss Account noticed that assessee has claimed expenditure being compensation of Rs.8,80,09,000/- awarded by Hon'ble Delhi High Court to Ms. Susan L. Beer, an Australian lady and paid by assessee. Assessee was asked to furnish the details of the expenses and substantiate its claim. Assessee *inter alia* submitted that an Australian lady Ms. S. L. Beer had filed a Suit bearing Suit No. 1298 of 1982 claiming a decree for Rs. 2 crore as damages and interest @ 18% p.a. for the permanent injuries suffered by her while swimming in the pool at erstwhile Akbar Hotel. The Learned Single Judge vide Judgement dated 03.03.2011 decreed the suit in favour of Susan L. Beer awarding Rs.1,82,00,000/- with simple interest thereon @ 6% p.a. w.e.f 22.01.1982 till the date of decree and future simple interest on that amount @ 10% p.a. till its realization. Against the order of the Single Judge, assessee filed appeal before the Hon'ble

Delhi High Court. The Hon'ble Delhi High Court while staying the Judgement of the Learned Single Judge directed the assessee to deposit the decretal amount to the Registrar of Delhi High Court. Thereafter, Hon'ble Delhi High Court vide Judgement dated 30.05.2014 modified the award to Rs.1,83,24,906.39 plus interest @ 9.17% p.a. till the date of the decree and 10% future simple interest. The Hon'ble High Court also imposed a cost of Rs.75,000/- on the assessee. The amount directed by the Hon'ble High Court was deposited with the High Court. AO noted that assessee has debited the Profit and Loss account on the basis of the decision of Delhi High Court dated 30.05.2014 which falls in Financial Year 2014-15 and not in the impugned assessment year. He also noted that as per the details furnished by assessee, the decision of providing the amount of compensation by the assessee was taken on 08.08.2014. He further noted that the assessee had decided to recognize its liabilities only on 08.08.2014. Considering the aforesaid facts AO held that the expenses of Rs.8,80,09,000/- cannot be claimed as expenditure in the year under consideration and accordingly denied the claim of the assessee.

6. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

7. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that assessee

had deposited amount of Rs.5,28,80,795/- pursuant to the order of Court on 24.02.2014 and thereafter in compliance with the order dated 30.05.2014 and 08.08.2014, assessee had further deposited an amount of Rs.2,40,56,079/- to the High Court on 26.08.2014. He submitted that the appeal was heard by the Hon'ble High Court on 24.01.2014 wherein the order was reserved and Judgement was pronounced on 30.05.2014 whereby the Hon'ble High Court directed the registry to remit the compensation deposited by the assessee to Ms Susan. He submitted that sicne the order was reserved on 24.01.2014 therefore the liability existed as on 31.03.2014. He further submitted that since the liability had crystallized on the basis of order of Delhi High Court, it was recognized and accounted for in the books of accounts for F.Y. 31.03.2014 and in accordance with Accounting Standard - 4 issued by Institute of Chartered Accountant of India which mandated the assessee to recognize the liability before the finalization of Balance Sheet. He further submitted that the genuineness of the claim being not in dispute and considering the fact that entire sum was paid to the Registrar. AO was not justified in disallowing the expenses. He also placed reliance on the decision of Hon'ble Apex Court in the case of Rotork Controls India (P.) Ltd. v. Commissioner of Income-tax [2009] 314 ITR 62 (SC) & Bharat Earth Movers v. Commissioner of Income-tax [2000] 245 ITR 428 (SC). He further submitted that disallowance is merely on account of timing difference and as such the same is of academic nature having no adverse Revenue implications. He thereafter relying on the

decision of Hon'ble Apex Court in the case of CIT vs. Excel Industries Ltd. 358 ITR 295 (SC), submitted that the assessee be allowed the claim of deduction. In the alternate, he submitted that to the extent amount which has been paid in the current year be allowed as deduction in the year under consideration and the balance amount that was paid in subsequent year be allowed as deduction in next year.

8. Learned DR on the other hand supported the order of AO and further pointed to the fact that the judgment of Hon'ble Delhi High Court being on 30.05.2014, the liability cannot be said to have crystallized during the year and therefore the AO was fully justified in disallowing the claim. He further submitted that the cheque of Rs.5,28,80,795/- was deposited during the year and the balance amount of Rs.2,40,56,079/- has been deposited on 26.08.2014 which is after the close of the year and in such a situation also the AO was fully justified in disallowing the claim of assessee. She thus supported the order of lower authorities.

9. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to the disallowance of Rs.8,80,09,000/- claimed by the assessee. It is an undisputed fact that the aforesaid amount which has been disallowed by the AO represents the compensation paid by the assessee to Ms Susan Beer on account of the decision of the Hon'ble Delhi High Court. It is also an undisputed fact that the payment of the aforesaid amount arose

on account of the decision of Hon'ble Delhi High Court which was pronounced on 30.05.2014. It is also an undisputed fact that out of the total compensation amount of Rs.5,28,80,795/- was deposited with the Registrar of High Court during the year under consideration and the balance amount of Rs.2,40,56,079/- was deposited with the Registrar on 26.08.2014. The incurring of expenditure is not in doubt and genuineness of the claim is not in dispute. Considering the totality of the aforesaid facts we are of the view that to the extent, the amount that was paid during the year under consideration i.e. Rs.5.28 crore (rounded off) be allowed as an expense in the year under consideration and the balance amount of Rs.2.40 crore (rounded off) which was deposited with the Registrar High Court be allowed as deduction in A.Y. 2015-16. **Thus the claim of the assessee is allowed.**

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

Order pronounced in the open court on 25.08.2021.

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.08.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

