

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 3269/Chny/2018
निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Sunstar Hotels & Estates Pvt. Ltd.,
No. 16/3, Vidyodaya, 1st Cross Street.
T. Nagar. Chennai 600 017.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 6(2),
Chennai 600 034.

[PAN:AALCS5478E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. R. Anita, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 13.09.2021
घोषणा की तारीख /Date of Pronouncement : 30.09.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 30.08.2018 relevant to the assessment year 2013-14. The effective ground raised in the appeal of the assessee relates to confirmation of disallowance of expenses at ₹.3,06,89,757/-.

2. The above appeal of the assessee is filed with a delay of 3 days, for which, the assessee has filed a petition in support of an affidavit for condonation of the delay, to which; the Id. DR has not raised any serious

objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 3 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2013-14 on 30.09.2013 declaring total income of ₹.2,23,44,930/-. The case was selected for scrutiny and against the statutory notices, the assessee furnished the details. After examining the details furnished by the assessee the Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act"] by determining the total income of the assessee at ₹.5,30,34,687/- after disallowing expenses at ₹.3,06,89,757/-. On appeal, the Id. CIT(A) confirmed the disallowance.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted the issue raised in the appeal is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for the assessment 2012-13 and prayed that the same may be followed. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. After considering the details submitted by the assessee, written submissions and clarifications

made, the Assessing Officer observed that the main objective for which the company was established was for setting up and operating Hotels and Resorts. The company is yet to commence business. The assessee has been deploying funds raised by it in short term lending operations till the time it commences business and it has received only interest income which has to be assessed under head income from other sources. As there is no income from business activity, the Assessing Officer was of the opinion that the assessee is not eligible to claim expenses of ₹.3,06,89,757/- and has to be capitalized as preoperative expenses. Accordingly, the Assessing Officer disallowed ₹.3,06,89,757/- and brought to tax. On appeal, after considering the submissions of the assessee, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer. Before us, the Id. Counsel for the assessee has submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case for the assessment year 2012-13 in I.T.A. No. 1242/Chny/2017 dated 27.08.2018. We have perused the order of the Tribunal, wherein, it was observed and held as under:

“3. The brief facts of the case are that the assessee is a private limited company engaged in finance, hotel & real estate business, e-filed its return of income for the assessment year 2012-13 on 29.09.2012 admitting income of Rs.1,09,25,509/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny and notice U/s.143(2) of the Act was issued on 08.08.2013. Finally assessment order was passed U/s.143(3) of the Act on 30.03.2015, wherein the Ld.AO made addition of Rs.2,06,42,360/- towards disallowance of expenditure.

4. The Ld.AO had disallowed the expenditure of Rs.2,06,42,360/- because the assessee had only earned interest income and the company had

not started the operation with respect to hotel and resort business. On appeal the Ld.CIT(A) allowed interest and miscellaneous expenditure to the tune of Rs.56,42,360/- against the interest income earned by the assessee, however disallowed the expenditure of Rs.1,50,00,000/- being the expenditure incurred towards payment of salary to the Directors of the company.

5. *Before us the Ld.AR submitted that in the relevant assessment year, the assessee was only engaged in finance business and deployed its funds for earning interest income. It was therefore pleaded that the entire expenses incurred by the assessee company ought to be allowed as deduction because the interest income earned by the assessee was in the nature of business income since the company was only indulging in finance business during the relevant assessment year. On the other hand, the Ld.DR vehemently argued stating that only the expenditure incurred towards earning interest can be allowed as deduction while computing the net interest income of the assessee which has to be taxed under the head "Income from other source". Hence it was pleaded that the order of the Ld.CIT(A) may be confirmed.*

6. *We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is abundantly clear that during the relevant assessment year, the assessee was only engaged in the business of financial services though the main objects in the Memorandum of Association was Hotel Business. It is pertinent to mention that the ancillary objects in the Memorandum of Association also permitted the assessee company to carry on the business of financial services. In the process the assessee company had deployed its fund towards earning interest income because during the relevant assessment year the assessee company did not commenced activities with respect to Hotel Business. Since the business of the assessee company during the relevant assessment year was only financial services, the income earned during the relevant assessment year ought to be assessed as business income and the entire expenditure incurred by the assessee for earning such income has to be allowed as deduction. Needless to mention, nothing on record is before us to suggest that the assessee company was indulging in any other business activity during the relevant assessment year. Therefore we are of the considered view that the expenditure incurred by the assessee towards salary for Rs.1,50,00,000/- has also to be allowed as deduction while computing the business income of the assessee for the relevant assessment year. Accordingly we hereby direct the Ld.AO to delete the addition of Rs.1,50,00,000/- sustained by the Ld. CIT(A)".*

6. Against the above order of the Tribunal, the Department preferred further appeal before the Hon'ble Madras High Court. While allowing the appeal of the Department vide judgement in TCA No. 738 of 2019 dated

08.07.2020, the Hon'ble High Court set aside the impugned order of the Tribunal for the assessment year 2012-13 and the matter was remanded to the Tribunal for fresh consideration in accordance with law. Against the judgement of the Hon'ble High Court, the assessee preferred an application under Order XLVII Rule 1 read with section 114 of the Civil Procedure Code to review the judgement dated 08.07.2020 in TCA No. 738 of 2019. Accordingly, vide judgement dated 21.12.2020 in Review Application No. 112 of 2020, the Hon'ble Madras High Court allowed the review application of the assessee and recalled the judgement dated 08.07.2020 made in TCA No. 738 of 2019. Thus, the decision of the Tribunal in I.T.A. No. 1242/Chny/2017 dated 27.08.2018 for the assessment year 2012-13 become final as the Id. DR neither controvert the above decision of the Tribunal nor filed any decision of higher Court having modified or altered.

6.1 In the assessment year under consideration also, the assessee company was yet to commence the business of operating Hotels and Resorts and therefore, the assessee was only engaged in finance business and deployed its funds for earning interest income. Thus, the income earned during the relevant assessment year ought to have been assessed as business income and the entire expenditure incurred by the assessee for earning such income has to be allowed as deduction. Moreover, nothing was brought on record to suggest that the assessee was indulging in any other

business activity during the year under consideration. Thus, respectfully following the decision of the Coordinate Benches of the Tribunal in assessee's own case for the assessment year 2012-13, we direct the Assessing Officer to delete the addition of ₹.3,06,89,757/- confirmed by the Id. CIT(A).

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 30th September, 2021 in Chennai.

Sd/-

[जी. मंजुनाथा, लेखा सदस्य]
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Chennai, Dated, 30.09.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.

Sd/-

[धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य]
(DUVVURU RL REDDY)
JUDICIAL MEMBER