

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 2789/Del/2019
(Assessment Year: 2014-15)

M/s. Central Park Infrastructure Development Pvt. Ltd., 3 rd Floor, Tower : D, Global Business Park, M.G. Rd., Gurgaon, Haryana – 122 002. PAN: AADCC4067B	Vs.	ACIT, Circle : 5 (2), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri K.V.S.R. Krishna, C. A.;
Department by :	Shri Mrinal Kumar Das, Sr. D.R.;
Date of Hearing :	15/11/2021
Date of pronouncement :	15/11/2021

ORDER

PER PRASHANT MAHARISHI, A.M. :

1. This appeal is filed by the assessee – M/s. Central Park Infrastructure Development Pvt. Ltd., for assessment year 2014-15 against the order of the Id. Commissioner of Income Tax (Appeals)–33, New Delhi, dated 23.01.2019, wherein the assessee remained unrepresented and appeal filed against the assessment order passed under Section 143(3) of the Income Tax Act, 1961 (the Act) dated 9.01.2016 was dismissed.

2. The assessee has the following grounds of appeal:-

“1. The Id. CIT(A)-33 has erred in law and on facts in deciding the appeal of the assessee ex-parte without giving opportunity of being heard. The order passed by the CIT(A)-33 is wrong and bad in law and deserves to be deleted.

2. Assessee submits that no notice for hearing is received by the assessee from office of CIT(A) on the address mentioned in Form-35. Further the appeal was filed with CIT(A)-2 however the order is passed by CIT(A)-33. No intimation for transfer of case is received by assessee. Therefore the order passed by the Ld. CIT(A) is against the principles of natural justice.

3. Without prejudice, the assessee submits that the Ld. CIT(A) has erred in law and on facts in treating the lease rental income as revenue in nature. The assessee contends that when the CIT(A) himself has held that the business has not commenced then there cannot be any income that can be assessed. Therefore, the lease rental income should also be considered as capital receipt.

4. The above grounds are independent to one and another.

5. The appellant prays he may be allowed to add, amend, alter, and forgo any of the grounds at the time of hearing. “

3. Brief facts of the case shows that assessee is a company engaged in the business of construction of a four star hotel New Delhi Airport on land lease by Delhi International Airport Pvt. Ltd. The assessee filed its return of income on 29.09.2014 declaring a loss of Rs. 7,55,77,095/-.
4. During the course of assessment proceedings the Assessing Officer found that assessee has debited Rs. 7,80,69,960/- on account of lease rent paid and rental equalization charges. Assessee explained that it has incurred lease rent paid actually as per Agreement of Rs. 4,56,83,383/- and rent equalization provision in terms of Accounting Standard 19 was made of Rs. 3,23,86,377/-. Therefore, it was stated that the total lease rent charges of Rs. 7.80 crores is allowable to the assessee. Assessee also submitted that for assessment year 2012-13, an identical issue was decided by the Id. CIT (Appeals) in favour of the assessee. The Id. Assessing Officer rejected the contention of the assessee. He noted that the Id. CIT (Appeals) has upheld the order of the Assessing Officer on capitalization of rent expenditure by holding that the activity of running the Hotel was in progress. Therefore, he disallowed Rs. 7,80,69,960/-. The income of the assessee was determined at Rs. 24,92,870/- by the order dated 9.12.2016.
5. The order of the Id. Assessing Officer was challenged before the Id. CIT (Appeals), who confirmed the action of the Assessing Officer. He noted that the assessee has debited to the profit and loss account lease rent expenses of amount paid during the year and further the amount worked out on Straight Line Method as per Accounting Standard 19. He held that the lease agreement is very clear on the amount payable by the assessee in each financial year, therefore, deduction on account of rent equalization cannot be allowed. Thus, he upheld that the lease rent paid is required to be capitalized as the business of the assessee has not yet started. With respect to the claim of the assessee that the Id. Assessing Officer has wrongly treated lease rental income as revenue of the assessee. He held that as the assessee has shown in the profit and loss account, which is other than rent of the

Hotel business, it cannot be deleted. Against this order the assessee is in appeal before us.

6. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that an identical issue arose in the case of the assessee for assessment year 2013-14 in ITA. No. 3905/Del/2017, which was decided on 9.12.2019. In para No. 3 of the order, the co-ordinate bench has upheld the action of the ld. CIT (Appeals) in that year of allowability of the rent equalization sum and further directed to set off the lease rental income with lease rent expenditure. The findings are as under :-

“3. Brief facts of the case are that assessee is a limited company engaged in the business of construction of hotel near New Delhi Airport on the land taken on lease from DIAL. During the year the Assessing Officer observed that the assessee debited Rs. 7,70,14,078/- under the head "other expenses". It was submitted that the assessee has entered into an agreement with the DIAL for a period of 26 years and 4 months for leasing of the property for which the assessee would pay a license fee of Rs. 1,92,35,07,853/-. The payment of this amount is in staggering and increasing order from 3.46 crores in F.Y. 2010-11 to 13.20 crores in Central Park Infrastructure Development P. Ltd. F.Y. 2035-36. These increasing amounts have been worked out taking into consideration the projected business growth of the assessee which entitles them to pay increasingly higher lease rentals from year to year totaling to Rs. 192.35 crores. The Assessing Officer has disallowed the amount of rental payments on the grounds that the accounting of rent equalization reserve is faulty. Before the Ld. CIT(A), the assessee pleaded that the lease rentals received from Oriental Structural Engineering Ltd. may be allowed to be set off against the lease rentals paid to DIAL. The asset of the land on which the lease rental received from Oriental Structural Engineering Pvt. Ltd. and paid to the DIAL is the same. The Ld. CIT(A) has also allowed the excess expenditure to be capitalized as the project of construction of hotel has not commenced business operations. Thus, we find no infirmity in the

order of the Ld. CIT(A) in allowing the netting off of leased rental received and paid.”

7. As this issue is squarely covered by that order, respectfully following the same, we hold that assessee is entitled to deduction of rent equalization sum of Rs. 3,23,86,377/- and total lease expenditure of Rs. 7,80,69,960/- is required to be capitalized after netting of the lease rent paid of Rs. 25,77,135/-.
8. Accordingly, the appeal of the assessee is allowed.
Order pronounced in the open court on 15/11/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated :15/11/2021

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi