

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri George Mathan, JM & Shri Ramit Kochar, AM**

**ITA No. 38/Coch/2020**  
(Assessment Year: 2007-08)

M/s.Hotel Abad,  
Chullickal,  
Kochi-682 005  
Kerala

The Assistant Commissioner  
of Income Tax,  
v. Circle-1(1),  
Cochin, Kerala

PAN – AABFH3482N

**Appellant**

**Respondent**

Appellant by  
Respondent by

:Shri TinoAnto, CA  
:Smt. Jamunna Devi, Sr.DR

Date of Hearing: 24.02.2022  
Date of Pronouncement: 24.02.2022

**ORDER**

**Per Shri Ramit Kochar, AM:**

This appeal, filed by assessee, being ITA No.38/Coch/2020, is directed against the appellate order dated 11.10.2019 in Appeal No.8/MTY/09-10 passed by learned Commissioner of Income Tax (Appeals)-Thrissur (hereinafter called "the CIT(A)"), for assessment year(ay):2007-08, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 30.11.2009 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The brief facts of the case are that the assessee is in the business of hotel. The short question which has arisen in this appeal is with respect to the non-allowability of carry forward and set off of earlier year's brought forward business losses against the income of the current year by the AO and for carry forward of remaining business losses to subsequent assessment years for set off against income of those years. The case of the assessee was selected for framing scrutiny assessment u/s.143(3)

r.w.s.143(2) of the Act. While framing the assessment u/s 143(3) vide order dated 30.11.2009, the AO denied the carry forward and set off of earlier year business losses, as return of income for the impugned assessment year was filed late by the assessee beyond the time prescribed under the provisions of Section 139(1) of the Act and hence the AO allowed set off of earlier years unabsorbed depreciation against the income assessed for the impugned assessment year, while earlier year business losses were not allowed to be set off against income of the impugned assessment year nor were allowed to be carried forward to subsequent years for set off against the income of the subsequent years. There were other additions also made by the AO to the returned income, while framing assessment u/s 143(3) of the Act. The assessee being aggrieved by the assessment order passed by the AO, filed an first appeal with Ld.CIT(A) and in the memorandum of appeal filed with Ld. CIT(A), the assessee raised several grounds of appeal challenging the additions made by the AO. However, the assessee did not raise specific ground of appeal relating to grievance of the assessee for not allowing of carry forward and set off of earlier year losses by AO against income of the impugned assessment year and for carried forward of remaining business losses to subsequent years to be set-off against income of the subsequent years. But, however, the assessee has claimed that it filed additional grounds of appeal before the Ld.CIT(A), vide application dt.22.11.2010 raising this ground of appeal as an additional ground regarding non allowability of carry forward and set off of earlier year business losses by the AO, wherein the following additional grounds were raised before Ld. CIT(A):

*"From*

*M/s.Hotel            Abad  
Chullickal,  
Cochin - 5.*

*To*

*The Commissioner of Income Tax (Appeals)  
Ernakulam.*

*Dear Sir,*

*Sub:- Income Tax assessment for assessment year 2007-08*

We have filed an appeal for the above assessment year on 18.01.2010 in the above, we have omitted to include a ground on the carry forward business loss. We are now submitting herewith 2 copies of the additional grounds of appeal. It is prayed that the Commissioner of Income Tax (Appeals) may kindly be pleased to admit the additional grounds of appeal.

The inconvenience is sincerely regretted.

Thanking you,

Yours faithfully,

For HOTEL ABAD

Cochin-5

22.11.2010.

Sd.-

(Partner)

M/s. Hotel Abad  
Chullickal  
Cochin.- 5.

I.T.Appeal for assessment year 2007-08

ADDITIONAL GROUNDS OF APPEAL BEFORE THE COMMISSIONER OF INCOME TAX (APPEALS), ERNAKULAM

STATEMENT OF FACTS

The income tax assessment of the appellant was completed under Section 143(3) in the proceedings dated 30.11.2009. The assessing officer has made various additions/disallowances against which an appeal had been submitted on 18-01-2010. In the assessment order, the assessing officer has restricted the loss brought forward from earlier years and eligible to be carried forward to Rs.2,38,782/-, being the depreciation only, against the total loss of Rs.80,83,710. The reason stated is that the return for assessment year 2007-08 was not submitted in time. The loss relate to earlier assessment years determined on the basis of returns under section 139(3) and is eligible for carry forward. Inadvertently the issue was not considered in the appeal submitted on 18-01-2010. Hence the additional grounds of appeal.

GROUND OF APPEAL

1. The assessing officer has gone wrong in not allowing the carry forward of the business loss, other than depreciation, from previous assessment years, amounting to Rs.78,63,829/-. The losses were determined, in the respective assessment years, in pursuance of returns filed under section 139(3). and are in accordance with section 80 of the Income Tax Act, 1961.
2. The delay in filing of return for the assessment year 2007-08 does not affect the eligibility for carry forward of loss of earlier years under section 72(1) of

*the Act, determined on the basis of returns submitted within the due date, in that assessment years.*

Verification

*I, JabeenRiaz, Partner,Hotel Abad, Chullickal, Cochin-5, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.*

*For HOTEL ABAD*

*sd/-*

*Signature:*

*Status of Appellant:*

*Cochin – 5  
22.11.2010"*

However, the Ld.CIT(A) passed an appellate order dated 11.10.2019 in appeal No.8/MTY/09-10 but did not adjudicated these two additional grounds of appeal claimed to have been raised by the assessee before Id. CIT(A).

3.The assessee being aggrieved by the non-adjudication of the additional grounds of appeal claimed to have been raised by it before Id. CIT(A) relating to non allowability by the AO of carry forward and set-off of earlier year brought forward business losses, has now come in appeal before the tribunal.

3.2 This appeal was heard by Division Bench in open Court. The Learned Counsel for assessee submitted that earlier year business losses were all assessed losses and for those years, the return of income was filed duly in time and the AO erred in not allowing the benefit of carry forward of these brought forward business losses of earlier years to be set off against income of impugned assessment year and for carry forward of remaining business losses to be carried forward for set off against income of subsequent years , as per mandate of Section 72 of the 1961 Act. It was submitted by Id. Counsel for the assessee that it is only in the ay:2007-08 that the return of income was not filed in time and the Ld.AO has not allowed the carry forward and set-off of earlier years brought forward business losses to be set off against income of the impugned assessment

year and for the remaining business losses to be carried forward to subsequent years for set off against income of subsequent years . It was submitted that the Ld.AO allowed the set-off of unabsorbed depreciation of the earlier years to be set off against the income of the impugned ay , but the business loss was not allowed to be set off against income of the impugned assessment year and for the remaining business losses to be carried forward to subsequent years for set off against income of subsequent years . It was submitted that the total loss of the earlier years was to the tune of Rs.92.47 lakhs, out of which Rs.78.64 lakhs was a business loss and Rs.13.83 lakhs was unabsorbed depreciation for the earlier years, and it was submitted that the assessee is aggrieved by not allowing to AO carry forward and set-off business loss to the tune of Rs.78.63 lakhs. It is fairly submitted by the Learned Counsel for the assessee that the Ld.CIT(A) has not adjudicated this ground which was claimed by assessee to have been raised as an additional ground before Id. CIT(A). It was also submitted by Learned Counsel that earlier year returns were filed intime which can be verified by the department and the assessee be allowed to carry forward and set off business loss as per mandate of Section 72 of the 1961 Act.Learned Counsel for the assessee, however, fairly submitted that since the matter has not been adjudicated by the Ld.CIT(A) , it will be fair that the matter can go back to the file of CIT(A) for fresh adjudication.

3.3. The Ld.DR also fairly submitted that since this issue has not been adjudicated by Id. CIT(A), the same can be restored to the file of Ld.CIT(A) for fresh adjudication.

4. We have heard contentions of both the parties in open court hearing and perused the material on record. We have observed that assessee is in the business of hotel.Admittedly the assessee filed its return of income late beyond the stipulated time as prescribed u/s 139(1) read with Section 139(3) of the 1961 Act, for the impugned ay:2007-08. The assessee case was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act. The AO made certain additions while passing assessment order u/s 143(3), and at the same

time since the return of income was filed late beyond the time prescribed u/s 139(1) read with Section 139(3) of the 1961 Act, the AO allowed set off of unabsorbed depreciation of earlier years to the tune of Rs. 11,45,130/- against the assessed income of the impugned assessment year, and only remaining unabsorbed depreciation of earlier years to the tune of Rs. 2,38,782/- were allowed by AO to be carried forward to subsequent year to be set off against income of the subsequent years. It is claimed by the assessee that the earlier year brought forward business losses were not allowed to be set off against income of the impugned assessment year and for the remaining business losses to be carried forward to subsequent years for set off against income of subsequent years, by the AO as the return of income for ay: 2007-08 was filed late by the assessee beyond the time prescribed u/s.139(1) read with Section 139(3) of the Act, on 15-11-2007. It is also claimed that earlier year's return of income were filed in time and the losses were duly assessed by Revenue. The assessee has filed an first appeal before Id. CIT(A) against the assessment order passed by the AO challenging various additions made by the AO, but the assessee did not raise this ground specifically in the memo of appeal filed before the Id. CIT(A) regarding non allowability by the AO for carry forward of brought forward business loss to be set off against income of the impugned assessment year and for remaining business losses to be carried forward to subsequent years for set off against income of the subsequent years as per mandate of Section 72, but the assessee has claimed to have raised this ground as an additional ground before the Ld.CIT(A) vide application dated 22.11.2010 (which is reproduced in the preceding para of this order). The Ld.CIT(A) did not adjudicated this additional ground of appeal claimed to have been filed by the assessee, while adjudicating appeal of the assessee vide appellate order dated 11.10.2019. Now, the assessee has come in appeal before the tribunal agitating that Id. CIT(A) erred in not adjudicating the additional ground of appeal claimed to have been filed by assessee before Id.CIT(A). In all fairness to both the parties and in the interest of justice, as also that the matter needs investigation and verification of the fact and hence, it could

go back to the file of Ld.CIT(A) for fresh adjudication of this ground of appeal claimed to have been raised by the assessee as an additional ground of appeal vide letter dated 22.11.2010 Thus, we are remitting the matter back to the file of the Ld.CIT(A) for fresh adjudication of additional grounds of appeal claimed to have been raised by the assessee before Ld.CIT(A). We clarify that we have not commented on the merits of the issue and all the contentions are kept open. Needless to say that Ld.CIT(A) will give proper opportunity of being heard to the assessee in accordance with principles of natural justice and in accordance with law, while adjudicating appeal of the assessee afresh as per our aforesaid directions. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

5. In the result, the appeal of assessee in ITA No. 38/Coch/2020 for AY: 2007-08 is treated as being allowed for statistical purposes.

Order pronounced in the open Court on 24<sup>th</sup> February, 2022 at Cochin.

Sd/-  
**(George Mathan)**  
**Judicial Member**

Sd/-  
**(Ramit Kochar)**  
**Accountant Member**

Cochin, Dated: 24<sup>th</sup> February, 2022

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) - Thrissur.
4. The CIT-Kochi.
5. The Sr.DR, ITAT, Cochin
6. Guard File

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Cochin*

