

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI OM PRAKASH KANT, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 949/Mum/2020
(निर्धारण वर्ष / Assessment Year:2008-09)

M/s. Minchin Hotel & Restaurant Pvt. Ltd. 183 Mamta Bldg Water Field Road Bandra (West), Mumbai-400050.	<u>बनाम/</u> Vs.	ITO-12(3)(4) Aayakar Bhavan, 1 st Floor, Room No.147 A, Churchgate-400050.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAIPH0028B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Neelam Jadhav	
Revenue by:	Ms. Rajni Roy	

सुनवाई की तारीख / Date of Hearing: 01/12/2021
घोषणा की तारीख /Date of Pronouncement: 23/02/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 12.12.2019 passed by the Commissioner of Income Tax (Appeals) -21, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2008-09.

2. The assessee has raised the following grounds: -

“1. a) The learned Commissioner of income tax (Appeals) is not justified in Confirming the addition made by the Assessing officer of Rs.350000/-as unexplained Investments. As per appellant explanation that since one of the director of Company Arvind Hegde is Hotelier and For the settlement of Bank loan of Minchin Hotels he has deposited cash of his hotel business directly to Loan account of



ITA No. 949/Mum/2020

A.Y. 2008-09

Private Limited company. Copy of Return and Cash summary of Arvind hedge is attached herewith for your king reference.

b) As regard to addition of Rs.239834 for written off of Loan outstanding with Bank of India for one-time settlement of Loan outstanding is concerned Appellant's opinion that since it is cash benefit given by Bank and it is not for payment of expenses. The same has been Viewed by Supreme court in the case of (Rollatainers Ltd-2010).

c) As regard to the difference of Loan amount of Rs.57862 between book and Bank statement is concerned appellant has agreed to add back the same to total income of assessee as unexplained credit.

d) The appellant has been charged to tax on the income assessed without considering and adjusting the carried forward loss of earlier years.

2. The appellant craves to add, amend, alter any of the grounds of appeal and when necessary.”

3. The brief facts of the case are that the assessee filed its return of income on 21.01.2009 declaring total income to the tune of Rs. Nil. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny u/s 147 of the I. T. Act, 1961. Notice u/s 148 of the Act was issued and served upon the assessee. In response to the notice, the assessee filed its return of income which he had filed earlier. Thereafter, the notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is engaged in the business of Hotel & Restaurants in the year under consideration. The case of the assessee was reopened on the basis of information received from the DDIT(Inv.), Unit-5(4), Mumbai in



which it was conveyed that the assessee has undergone one-time settlement with Bank of India by paying Rs.11,15,072/-. By availing this scheme, the bank has written off interest and other liabilities in lieu of the single payment made by the assessee company. This benefit was availed by the assessee but the same was not reflected in the return of income filed by the assessee. The assessee paid a cash in sum of Rs.3,50,000/- against outstanding loan amounting to Rs.5,89,834/- as on 01.04.2007. The interest in sum of Rs.5,89,834/- was waived. The notice in connection with the source of payment in sum of Rs. 3,50,000/- was given but no source was given, therefore, the same was added u/s 69 of the Act. The loan waived to the tune of Rs.2,39,834/- was also added to the income of the assessee u/s 41(1) of the Act. As per the balance-sheet, the unsecured loan was paid to the tune of Rs.6,47,696/-. The statement of account submitted by said bank speaks about outstanding loan in sum of Rs.5,89,834/-. The difference in sum of Rs.57,862/- was not explained, hence, the same was not added to the total income u/s 68 of the Act. The total income of the assessee was assessed to the tune of Rs.6,47,700/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee but the assessee was not satisfied on the grounds mentioned above, therefore, the assessee has filed the present appeal before us.

ISSUE NO. 1

4. Under these issues the assessee has challenged the addition in sum of Rs.3,50,000/- in view of provisions u/s 68 of the Act. The said amount was deposited in cash in the bank. Despite issuance of notice and an opportunity given to the assessee, no source was explained even before the Hon'ble ITAT. The assessee failed to produce any evidence in support of his claim.



ITA No. 949/Mum/2020
A.Y. 2008-09

Since there is nothing in support of the claim of the assessee, therefore, we affirm the addition raised by AO and decide this issue in favour of the revenue against the assessee.

ISSUE NO.2

5. Under this issue the assessee has challenged the addition of Rs.2,39,834/- u/s 41(1) of the Act. The said amount is the interest waived by the bank in which the assessee has taken the loan. Undoubtedly, the said amount would be the income of the assessee in view of provision u/s 41(1) of the Act but it is necessary on the part of the AO to examine the issue in the light of the preceding year. It is to be seen whether the assessee has claimed the interest/expenses in the earlier year or not. Since there is no finding in connection with the deduction claimed with the earlier year by CIT(A), therefore, in the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the AO for verification of interest claimed in earlier years and adjudicate in accordance with law. The ground of the appeal is accordingly allowed for statistical purposes.

ISSUE NO.3

6. Issue no.3 is in connection with the addition of Rs.57,862/- which was the difference of the balance-sheet as on 31.03.2007 to 31-03-2008 and as per the statement of account submitted by bank. On appraisal of the order passed by CIT(A), we noticed that the CIT(A) has already deleted the said addition, therefore, there is no need to give the finding on this issue because this issue has already been decided in favour of the assessee against the revenue.



ITA No. 949/Mum/2020
A.Y. 2008-09

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

Order pronounced in the open court on 23/02/2022

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 23/02/2022

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार/(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai