

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 628/Mum/2022 (A.Y. 2014-15)

M/s. A&A Hotels Pvt. Ltd. 6/a, Sindhu House Nanabhoy Lane, Fort Mumbai-400 001. PAN : AAFCA8628J (Appellant)	Vs.	ACIT, Circle - 1(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
---	-----	---

Assessee by	Shri Prakash Jotwani
Department by	Shri Manoj Sinha
Date of Hearing	12.07.2022
Date of Pronouncement	15.07.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 7.3.2019 passed by learned CIT(A)-2, Mumbai and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of learned CIT(A) in confirming the addition of Rs. 44,38,779/- relating to pre-operative expenses disallowed by the Assessing Officer.

2. The appeal is barred by limitation by 1062 days. The assessee has filed a petition requesting the Bench to condone the delay. In the petition it is stated that the assessee company was relocated to a new address two times. During shifting, few documents and files got misplaced, which included the order passed by learned CIT(A). When the assessee received penalty order under section 271(1)(c) of the Act on 25.3.2022, it realised that the appeal against learned CIT(A) has not been filed before the ITAT. Immediately thereafter, appeal was filed on 7.5.2022 and it has resulted a delay of 1062 days. The Ld A.R submitted that the office of the assessee did not function properly due to pandemic. Accordingly, the learned AR submitted that there was sufficient

cause for the assessee in not filing the appeal in time. Accordingly he prayed that the delay in filing the appeal may kindly be condoned.

3. The Learned DR, on the contrary, submitted that the reasons furnished by the assessee cannot be considered as sufficient cause.

4. We have heard the parties on this preliminary issue and perused the record. We noticed that the assessee has filed revised form 36 mentioning current address, which is different from the address shown in the order of learned CIT(A). It is the submission of the assessee that some files and documents got misplaced during shifting of the office. Apart from the averment made in the affidavit, no other material was placed on record to support it. At the same time, as held by Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji & Others (1987) AIR 1353, the substantial justice should be preferred over technical consideration. Accordingly, we are of the view that the delay in filing this appeal may be condoned subject to payment of cost. Accordingly we impose a cost of Rs.2,000/- upon the assessee, which shall be paid to the credit of Income Tax Department as 'other fees' within one month of receipt of this order by the assessee. Subject to the payment of the above cost, we condone the delay in filing the appeal.

5. The only issue urged relates to disallowance of Rs. 44,38,779/- being 20% of pre-operative expenses claimed by the assessee.

6. Facts relating to the issue are stated in brief. The assessee company was incorporated on 2.8.2006 for the purpose of doing hotel business. The Learned AR submitted that the assessee had taken a building on lease for the purpose of running a hotel and renovated it. The assessee incurred renovation expenses from financial year 2006-07 to 2010-11. Total expenditure incurred was Rs. 2,21,93,895/- and the assessee amortised the same over a period of five years equally commencing from A.Y. 2012-13. The Learned AR submitted

that the return of income filed by the assessee for the year under consideration was taken up for scrutiny. Before the Assessing Officer, the assessee wrongly represented the above expenditure as preliminary expenses and the said representation was rightly rejected by the Assessing Officer holding that the impugned expenses do not fall under the category preliminary expenses. The Learned AR further submitted that these expenses are in fact, revenue expenditure and the assessee should have claimed it so in the respective year and could have carried forward loss. However, the assessee chose to write off of this expenditure equally in five years. He also submitted that even if the expenditure is capitalized, the assessee would be eligible for depreciation. Accordingly, learned AR submitted that the above expenditure should be allowed.

7. When it was pointed out by the Bench that the expenditure could have been capitalised by the assessee in the first year in which the business was commenced, the learned AR submitted that the assessee does not have any objection if it is capitalized and direction is given for allowing depreciation thereon.

8. We have heard learned DR and perused the record. There is no dispute that there is no provision under the Act which permit writing off pre-operative expenses over a period of five years. In our view, in the facts and circumstances of the case, the pre-operative expenses incurred by the assessee should have been capitalised against the value of assets. Accordingly, claim for deduction of pre-operative expenses under deferred revenue basis is liable to be dismissed.

9. In our view, the assessee should not be left out with remedy. We have earlier held that the pre-operative expenses should have been capitalized against the value of all assets. Accordingly, we hold that the pre-operative expenses should be capitalized in the year of commencement of business. There should not be any dispute that the assessee shall be eligible to claim

depreciation on the amount so capitalized. Accordingly, we direct the Assessing Officer to allow depreciation applicable to the year under consideration on the amount so capitalised. Accordingly disallowance of proportionate amount of Rs.44,38,779/- is confirmed and the AO is directed to allow eligible amount of depreciation on the amount so capitalized. The order passed by learned CIT(A) on this issue would stands modify accordingly. We order accordingly.

10. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 15.07.2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/07/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS