

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'PANAJI' BENCH, GOA'**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.393 & 394/PAN/2018  
Assessment Years: 2004-05 & 2005-06**

NANU RESORTS PVT. LTD.		ACIT, MARGAO	CIRCLE-1,
Nanu House, Varde Valaulikar Road, Margao- Goa	Vs.		
<b>PAN: AAACN 7114 P</b>			
(Appellant)		(Respondent)	

**Present for:**

Appellant by : None  
Respondent by : Shri Mayur Kamble, Sr. DR

Date of Hearing : 15.06.2022  
Date of Pronouncement : 30.08.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

These two appeals by the assessee arising out of the order of Ld. CIT(A), Panaji-1, Panaji in ITA Nos.305 & 306/MRG/2014-15 dated 02.07.2018 against the assessment order passed by DCIT, Circle-1, Margao-Goa u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') dated 25.10.2011 for both A.Y. 2004-05 and A.Y. 2005-06.

2. The issue involved in both these appeals are common which relates to treatment of expenditure incurred by the assessee for replacement of assets and renovation as revenue or capital in nature. For AY 2004-05, the quantum of expenditure in dispute is of Rs. 10,81,672/- and for AY 2005-06 it is Rs. 2,06,379/-.

3. Before us, none appeared on behalf of the assessee and Shri Mayur Kamble, Sr. DR represented the Department.

4. We note that the assessee has placed on record a written submission filed on 10.06.2022 along with paper book containing 21 pages and has made a request that this may be considered in disposing the appeal on merit as the authorized representative of the assessee Advocate Shri Parveen Kumar Bansal is at USA. Considering the written submission and paper book on record and by taking assistance from the Ld. Sr. D.R, we proceed to adjudicate on the matter ex-parte qua the assessee.

5. Brief facts as culled out from the records relating to assessment year 2004-05 by taking it as a lead case are that assessee is in the business of hotel, resort and real estate development. Assessee filed its return of income on 01.11.2004 reporting total income of Rs. 94,61,469/-. Case was selected for scrutiny and assessment was completed u/s 143(3) of the Act on 11.12.2006 on assessed income of Rs. 94,64,838/-. Subsequently, Ld. AO noted income escaping assessment and invoked the provision of Section 147 read with Section 148 of the Act, for which notice u/s 148 of the Act was issued and served on the assessee on 22.03.2011. In the course of reassessment, inter-alia, Ld. A.O made a disallowance of expenses towards repairs and maintenance by treating it as capital expenditure for an amount of Rs. 20,76,892/-, for which the assessee went in appeal before the Ld. CIT(A). Ld. CIT(A) called for the details from the assessee and remand report from the Ld. AO in respect of impugned disallowance made by the AO. It is also to be noted that both the assessment years are in appeal before this Tribunal in second round which germinates from the order of Co-ordinate Bench of ITAT, Panaji, Goa in ITA Nos. 124 & 139/PNJ/2014 for AY 2004-05 & 2005-06 dated 08.08.2014 wherein

the Co-ordinate Bench had directed the Ld. CIT(A) in para 3.1 of the said order to examine the matter of allowing the expenditure in each of the assessment year afresh after identifying the nature of expenses as to whether they are capital or revenue. The specific direction given to the Ld. CIT(A) stated that the Ld. CIT(A) should re-decide whether the current repairs as incurred by the assessee are capital expenditure or revenue expenditure.

6. On the remand report from the ld. AO, Ld. CIT(A) further called for explanation from the assessee for rebuttal to the remand report. After considering the remand report and submission made by the assessee, Ld. CIT(A) partly allowed the expenses of Rs. 9,95,220/- as revenue expenses out of total addition of Rs. 20,76,892/- and the balance of Rs. 10,81,672/- was sustained as addition by treating it as capital expenditure for AY 2004-05. Similarly for AY 2005-06, the disallowance sustained by Ld. CIT(A) is of Rs. 2,06,379/- out of total of Rs. 19,43,975/-.

7. Assessee being aggrieved by disallowance sustained by the Ld. CIT(A), is in appeal before the Tribunal.

8. From the perusal of the written submission placed on record by the Ld. Counsel of the assessee, we note that business of the assessee is that of hotel resort and this business requires the assets to be kept always in good condition by its regular repairs and maintenance. In the remand report by the Ld. AO dated 16.05.2018, Ld. AO also noted that “*The assessee M/s Nanu Resorts Pvt. Ltd. have two units namely Nanu Resorts (a beach resort) and Nanutel (hotel situated in the Margao City). Nanu Resorts have 96 rooms whereas Nanutel has 55 rooms. The ledger accounts, the narrations are fully verified and the sample checking of supporting bills/invoices have been done and it is found that except*

*following items which are replacement to old, damaged and outdated items, other are repairs and maintenance.*” Thus the Ld. AO in the remand proceedings held that the following expenses as expenses in the nature of capital expenditure:

- 1.a) One TV purchased Rs. 12,000/- on 14.01.2004
- b) One TV purchased Rs. 35,000/- on 29.02.2004
2. Replacement of total computer networking system Rs. 4,91,600/-
- 3.a) Replacing of Merry Go Round Rs. 13,572/- (spares for merry go round).
- b) Replacement of electrical equipments in Store Room Rs. 2,30,000/-
- c) Replacement of equipments in Kitchen Rs. 2,99,500/-.

Similarly, for AY 2005-06 following expenses have been treated as capital expenditure:

- a) Chairs & Tables Rs. 99,008/-
  - b) Chairs & Table Rs. 15,960/-
  - c) Chairs Rs. 91,411/-
- Totalling to Rs. 2,06,379/-

8.1. In the rebuttal submitted by the assessee on the remand report, it is contended that Ld. AO himself in the remand report has asserted the fact that the items were in the nature of replacement of old, damaged and outdated items meaning thereby the items are replacement to the existing useless/obsolete/damaged items and therefore expenses incurred by the assessee are revenue in nature. Even items had not resulted into any additional benefit or value addition derived by the resort/hotel of the assessee except for ensuring

that the same benefit as were available from their initial installation is made available for its customers. It has also been pointed out that the nature of expenses described by the ld. AO is as “replacement” for an existing items and nowhere there is a finding to suggest that there is new addition of assets to the existing resort/hotel. The assessee has strongly contended that in carrying on the business of hotel/resort, life of any assets is too short as compared to any other industry and to maintain the business to its existing levels, periodic maintenance and replacement of furniture and other machines and spares etc. are required so as to ensure same level of benefit to the customers as were being offered at the time of their original installation. Thus, assessee contended that none of this expenditure creates any additional room space or facility or new benefits to the customers, the expenses incurred on maintenance of the existing facilities are of revenue nature and cannot be treated as capital expenditure.

8.2. The assessee has placed strong reliance on the decision of Hon'ble High Court of Madras in the case of Pandiyan Hotels Ltd. vs. DCIT in Tax Case Appeal No. 226 of 2018 dated 16.07.2020 wherein substantial question of law before the Hon'ble Court was “*Whether expenditure incurred in the renovation and redecoration of rooms in hotel would amount to capital expenditure or revenue expenditure?*” While answering the substantial question of law the Hon'ble Court dealt with several decisions including the decision of Hon'ble High Court of Karnataka in the case of CIT vs. Mac Charles (India) Ltd. [2015] 233 Taxman 177, Hon'ble Delhi High Court in the case of Comfort Living Hotels Pvt. Ltd. vs. CIT [2014] 363 ITR 182, Hon'ble Gujarat High Court in the case of CIT vs. CAMA Hotels Ltd. [2015] 235 Taxman 206 and also considered the decisions of Hon'ble Apex Court in the case of Ballimal Naval Kishore [1997] 221 ITR 414 and CIT vs. Saravana Spinning Mills Pvt. Ltd. [2007] 293 ITR 201. The Hon'ble Court held that the expenditure

incurred by the assessee is revenue expenditure and not a capital expenditure and thus answered the substantial question of law in favour of assessee and against the revenue. The relevant extract of the said decision are reproduced as under:

*“ 12. This Court is of the view that there can be no straight jacket formula, which can be applied while deciding the issue as to whether the expenditure is in the revenue field or in the capital field and facts are very relevant to be taken note of. This would be the approach while deciding such cases.*

*13. Now, we may proceed to discuss the decision of this Court in the case of CIT vs. Ooty Dasaprakash (reported in [1999] 237 ITR 902). We refer to this decision because this is more or less an identical case to that of the assessee before us. The Division Bench held that the expenditure was incurred solely for repairs and modernizing the hotel and replacing the existing components of the building, furniture and fittings, with a view to create a conducive and beautiful atmosphere for the purpose of running of a business of a hotel and it goes without saying that the expenditure incurred by the assessee for the relevant assessment years in repairing and modernizing the hotel and replacing the existing components of a portion of the building, furniture and fittings cannot at all be stated to be of enduring in nature, in the nature of being a “capital expenditure”; but, definitely such an expenditure would fall under the category of ‘revenue expenditure’ in nature to be allowed, as a deduction under Section 37 of the Income Tax Act, Act. In the aforementioned decision, the Division Bench followed the said assessee’s own case viz CIT Vs. Dasaprakash [reported in (1978) 114 ITR 210 (Madras).*

*14. In the decision of the Karnataka High Court in the case of CIT Vs. Mac Charles (India) Limited [reported in (2015) 233 Taxman 0177], the assessee, carrying on the business of hotel, incurred expenses under repairs and maintenance of the hotel building. The Assessing Officer disallowed the said expenditure. The <http://www.judis.nic.in> TCA.NO.226 of 2018 First Appellate Authority confirmed the said order and the assessee filed an appeal before the Tribunal. The Tribunal held in favour of the assessee, aggrieved over which, the Revenue preferred an appeal before the Division Bench of the Karnataka High Court. The Court, after referring to the decision of the Honble Apex Court in the case of Ballimal Naval Kishore and the decision of the Honble Apex Court in the case of CIT Vs. Saravana Spinning Mills (P) Ltd. [reported in (2007) 293 ITR 201], held that the basic test to find out as to what would constitute repairs is that the expenditure must have been incurred to preserve and maintain an already existing asset and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage. It was held that when no extra flooring space or extra room capacity is added on account of such repairs, it cannot be said that a new asset has come into existence and all these repairs are done to preserve and maintain an already existing asset.*

*15. In the decision of the Delhi High Court in the case of Comfort Living Hotels P. Ltd. Vs. CIT [reported in (2014) 363 ITR 182], the Court applied the decision of the Hon’ble Supreme Court in the case of Empire Jute Company Limited that an action <http://www.judis.nic.in> TCA.NO.226 of 2018 that merely*

*facilitates the assessee's business by making it more profitable, while leaving the fixed capital untouched, is a revenue expenditure.*

16. *In the decision of the Gujarat High Court in the case of CIT Vs. CAMA Hotels Ltd. [reported in (2015) 235 Taxman 0206], an identical question arose for consideration. The Court, after referring to the decisions in the cases of Empire Jute Company Limited, Ballimal Naval Kishore and Comfort Living Hotels P. Ltd., held that the expenditure incurred by the assessee for renovating a hotel, rooms, conference halls, etc., was a revenue expenditure.*

21. *We find that the assessment is for the year 2012-13 and the facts are not in dispute. It is only an application of legal principle to the given facts. Therefore, we hold that there is no justification in remanding the matter to the Tribunal or to the any other Lower authority. In the light of the above discussion, we hold that the expenditure incurred by the assessee is a revenue expenditure and not a capital expenditure.*

22. *Accordingly, the tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial question of law framed for consideration is answered in favour of the assessee and against the revenue. Consequently, the order passed by the Ld. CIT(A) stands restored. No costs. Consequently, the connected CMP is closed."*

8.3. From the rebuttal submission made by the assessee on the remand report for each of the items treated as capital expenditure, the relevant explanation are reproduced as under:

**For Asstt. Year 2004-05**

1. **(a) One TV purchased Rs.12,000/- on 14.01.2004**

**(b) One TV purchased Rs.35,000/- on 29.02.2004**

*The above television sets were purchased to replace the Old Model Televisions which were broken due to mishandling by customers. The normal life of Televisions in Hotel Industry is two to three years and therefore are treated as revenue expenditure.*

2. **Replacement of total computer networking system Rs.4.91,600/-**

*These expenses were required to be incurred for connecting various computer systems and other data processing units by using latest technology . By incurring these expenses the company did not acquire any new asset as such but the same were necessary for faster & smooth functioning of the assets connected thereto. In the case of CIT .v.Kirloskar Computer Services Ltd. (2014) 221 Taxman 391/270 CTR 331 (Karn.)(HC) it was held that the assessee was already using the telephone line and subsequently, a cable network for data transfer but the operation was slow. Hence, the assessee has switched to a new technology in order to increase the capacity and speed of transfer. Thus, the expenditure was held to be revenue in nature allowable under section 37(1).*

**3. (a) Replacing of Merry Go Round Rs.13,572/- (spares for merry go round).**

**(b) Replacement of electrical equipments in Store Room Rs.2,30,000/-**

**(c) Replacement of equipments in Kitchen Rs.2,99,500/-.**

*These items were replaced to make main asset workable. It has neither created new asset nor increased the life of the asset to give enduring benefit. By replacing parts of Merry Go Round the same became workable. Likewise the expenditure incurred of Rs.2,30,000/- and Rs.2,99,500/- was towards replacement of damaged coolers installed in Store Room and Kitchen which are required to be replaced to keep the entire store room, kitchen, etc in working condition on a continues basis to preserve the raw materials and therefore are treated as revenue expenditure.*

**For Asstt. Year 2005-06**

**4. (a) Chairs & Tables Rs.99,008/-.**

**(b) Chairs & table Rs.15,960/-.**

**(c) Chairs Rs.91,411/-.**

*These furniture items were purchased solely for replacing existing furniture & fittings with a view to create a conducive and beautiful atmosphere in the hotel lobbies, etc and was allowable as revenue expenditure. This view was supported in by Madras High Court in the case of CiT Vs Ooty Dasaparakash 237 ITR 902 Mad.*

9. Ld. Sr. D.R placed relying on the remand report of the Ld. AO and the findings given by the Ld. CIT(A) while sustaining the addition.

10. We have given our thoughtful consideration to the material placed on record and find force in the submission made by the assessee through its written submission. Admittedly, fact is that assessee is into the business of hotel/resort wherein the up-keep and maintenance of hotel/resort/property is of prime importance so as to give the customers best possible experience for their continued patronage. The regular maintenance including the replacement of worn out furnishing is a continuous requirement of the hotel industry. In the remand report also, Ld. AO has noted that the items have been replaced for the old/damaged/outdated items, even though he was held them as capital

in nature. It is also a fact on record that no new addition of assets or facilities has come into existence in respect of the existing resort/hotel of the assessee. We note from the submissions made that the expenditure incurred by the assessee have been made to provide the same benefit as were available at the time of their initial installation. Further, there have been no addition to the number of rooms of the resorts/hotel or any other space to generate the additional income from that place. Thus, we are inclined to hold that the expenses which have been treated as capital in nature by the Ld. CIT(A) are to be allowed as revenue expenditure. While holding so, we find force from the decision of Hon'ble Madras High Court in the case of Pandiyan Hotels Ltd. (supra). Once the expenditure incurred are held to be revenue in nature, it has the consequential effect on the depreciation allowance given by the Ld. AO and has to be treated accordingly while giving effect to our finding by the Ld. AO. Accordingly, the ground of appeal of the assessee is allowed in both the assessment years.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the IT (AT) rules, 1963 on.30.08.2022.

**Sd/-**

**(CHANDRA MOHAN GARG)**  
**JUDICIAL MEMBER**

**Sd/-**

**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Dated: 30.08.2022.  
SB, Sr.PS.

Copy to:

1. The Appellant: Nanu Resort Pvt. Ltd.
2. The Respondent: ACIT, Circle-1, Margao
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench

//True Copy//

By Order

Sr. Private Secretary

ITAT, Panaji (on tour)