

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

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

**ITA No.191/PAN/2018
Assessment Year: 2008-09**

M/S SANKAMTAL HOTEL PVT. LTD.		ACIT, BELAGAVI	CIRCLE-1,
S. Parthasarathi, Advocate, 3/1, Pranava Complex, 5 th Cross, Malleswaram, Bangalore- 560 003.	Vs.		
PAN: AADCS 5106 P			
(Appellant)		(Respondent)	

Present for:

Appellant by : Smt. Pratibha R., Advocate
Respondent by : Shri Mayur Kamble, Sr. DR

Date of Hearing : 14.06.2022
Date of Pronouncement : 30.08.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order of Ld. CIT(A), -Belagavi in ITA No.51/BGM/2016-17 dated 25.02.2018 against the assessment order passed by ACIT, Circle-2(1), Belagavi u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') dated 14.03.2016 for A.Y. 2008-09.

2. There is a delay of five days in filing the present appeal for which the petition for condonation of delay and affidavit are placed on record. From the Affidavit, we note that the assessee was out of station when the appeal memo was sent to him by the Counsel for its signature and therefore a short delay of 5 days occurred. Considering the petition and in the interest of justice and fair play, we find it proper to admit the appeal and proceed to adjudicate thereon.

3. The Grounds of appeal are reproduced as under:

1. *On the facts and in the circumstances of the case, the Id CIT(A) erred in passing the order in the manner which he did.*

2. *The conditions precedent being absent, the reopening of the assessment U/s. 147 is bad in law.*

3. *The learned CIT(A) having not adjudicated the submission made by the appellant towards the validity of the reopening u/s. 147 of the Act prior to the commencement of assessment proceedings, the assessment as made was opposed to law and against the principles of natural justice and thus liable to be cancelled.*

4. *The Id. CIT(A) ought to have appreciated that the expenditures incurred towards change of flooring and bathroom fittings without changing the structure of the building. Accordingly, the expenditure incurred has to be allowed in full.*

5. *The Id. CIT(A) ought to have appreciated that the expenditure was incurred for the purpose of carrying on the business in an effective and profitable manner and the Appellant was not acquired any asset/ income earning apparatus as a result of expenditure. Thus, the said expenditures are purely incurred for business purposed and has to be allowed.*

6. *The learned CIT(A) erred in levying interest under Sections 234A, 234B 85 234C of the Act.*

7. *Without prejudice the disallowances as made by the learned CIT(A) are arbitrary excessive and ought to be reduced substantially.*

3. Before us, Smt. Pratibha R. Advocate appeared on behalf of the assessee and Shri Mayur Kamble, Sr. DR represented the Department.

4. Brief facts as culled out from the records are that the assessee is running a hotel under the name and style of M/s Sankamtal Hotel Pvt. Ltd. It filed return of income on 24.09.2008 reporting total income of Rs. 42,58,410/-. Assessment u/s 143(3) of the Act was completed on 24.12.2010. Subsequently, the case was reopened by invoking the

provision of Section 147 read with Section 148 of the Act, for which the notice u/s 148 of the Act was issued on 31.03.2015. In response to the said notice, return was filed on 04.06.2015 reporting the same total income as was reported originally. In the course of reassessment proceedings, Ld. AO noted that assessee has incurred expenditure on restaurant renovation amounting to Rs. 10,57,901/- out of which Rs. 3,76,563/- were in respect of purchase of tiles and the balance in relation to labour cost and other materials including sand, cement, plumbing material etc. Ld. AO also noted that the assessee has incurred expenditure on Neon Light Sign Board of Rs. 80,000/-. Assessee made submissions in respect of claim of these expenditures as revenue expenditure allowable u/s 31 and 37 of the Act. However, Ld. AO completed the assessment by treating both the expenditures as capital in nature and made the addition after allowing depreciation on the same @ 10%.

5. Aggrieved, assessee went in appeal before the Ld. CIT(A).

6. Before the Ld. CIT(A), assessee reiterated that it is carrying on the business of hotel with lodging, restaurant and marriage hall. During the year, assessee had undertaken repair works of certain rooms by replacing flooring tiles, electrification, POP, bathroom fittings, etc. amounting to Rs. 10,57,901/- claimed as repairs and maintenance in the profit and loss account. It was submitted that there is no acquisition of any new additional capacity i.e. there is no increase of number of rooms or floor area by incurring the said expenditure. These expenditures were merely for replacement of parts in the existing building and there has been no increase in its capacity also. In respect of the Neon Light Sign Board, assessee submitted that this expenditure of Rs. 80,000/- is also of revenue in nature as its life is short which consists of electric bulbs, tubes, different electrical parts and

supporting structures. After considering the submission of the assessee, Ld. CIT(A) sustained the addition.

7. Aggrieved, assessee is in appeal before the Tribunal.

8. Before us, the ld. Counsel reiterated the submissions made before the authorities below. To buttress this submission, Ld. Counsel placed reliance on the decision of Hon'ble High Court of Karnataka in the case of CIT vs. Mac Charles (India) Ltd. in ITA NO. 488/2009 dated 17.11.2014. The substantial question of law before the Hon'ble Court in the said decision is reproduced as under:

3. The appeal was admitted to consider the following substantial questions of law:

1. Whether the Tribunal was correct in holding that the expenditure incurred by the assessee towards interior decoration and refurnishing should be treated as a revenue expenditure when the assessee gained a enduring advantage and the same constitute capital expenditure?

2. Whether the Tribunal was correct in not taking into consideration that after incurred of expenditure towards interior decoration and refurnishing the total receipts of the assessee from room rents, restaurants, banquets and other services were increased from Rs.21.64 Crores to Rs.28.29 Crores and hence expenditure is capital in nature?

8.1. The findings given by the Hon'ble High Court by holding the expenses as revenue in nature is dealt with in para 9 which is reproduced as under:

“9. Merely because the income of the hotel has increased, it does not necessarily follow it is because of the refurnishing or repair work done to the hotel rooms. That may be one of the factor. The real test is whether all those acts constitute replacing the existing asset. The existing asset is the hotel building and its rooms. 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. All these repairs are done to preserve and maintain an already existing asset. In the course of such repairs, if they have upgraded the facilities to international standards, then that would not constitute a new asset. Therefore, the Tribunal was justified in holding that the expenditure incurred towards repairs and replacement of old parts would be in the nature of revenue expenditure and not capital expenditure.”

8.2. Ld. Counsel further placed strong reliance on the decision of Hon'ble Jurisdictional High Court of Bombay, Bench at Goa in the case of PCIT, Panaji vs. Goa Tourism Development Ltd. in Tax Appeal No. 72 of 2018 dated 07.01.2019 wherein the issue under consideration was in respect of treatment of expenditure towards repairs and renovation of the assessee's hotel as revenue or capital which was held to be in favour of the assessee by treating it as revenue in nature. The relevant extract of the said decision are reproduced as under:

"2. The challenge in this Appeal is to the order dated 13 April, 2018 made by the Income Tax Appellate Tribunal, (ITAT), Panaji, dismissing the appeal filed by the Appellant/Revenue against the order dated 30 May, 2017, made by the Commissioner of Income Tax (CIT) (Appeals) relevant to the Assessment Year 2008-09. The CIT (Appeals), as well as the ITAT, have concurrently held that the expenditures towards repairs and renovations of the Respondent-Assessee's hotel properties must be treated as a revenue expenditure and not as a capital expenditure.

6. In the present case, the CIT Appeals, and the ITAT have examined the factual aspects of the matter in some details. The expenditure, in the present case, was towards dismantling Mangalore tiles, and laying laterite stones, laying plaster, plaster of paris and painting, waterproofing, replacement of tiles and plumbing. There is no infirmity in the view taken by the two Authorities that such expenditure be treated as revenue expenditure.

9. In the Commissioner of Income Tax vs. Cama Hotels Ltd. [2015] 63 Taxmann.com 27 the Karnataka High Court has held that merely because the income of the hotel may have increased on account of repairs, renovation and modification, it does not necessarily follow that the repairs and renovation amount to replacing the existing assets with new capital assets. The existing asset is the hotel and merely because the same can be used in a better manner or more profitably on account of repairs and renovation, it cannot be said that the expenditure incurred towards such repairs or renovation was capital expenditure and not the revenue expenditure.

11. The aforesaid decision is not applicable to the facts of the present case because, here it cannot be said that the expenditure incurred was for the purpose of bringing into existence a new asset or obtaining a new advantage. This was as simple case where the existing assets were repaired, or to some extent renovated. The CIT Appeals, as well as the ITAT, on facts, have held that this was not a case where some new asset was brought into existence or new advantage of enduring nature was obtained. Such concurrent findings of fact do not suffer from any perversity, so as to give rise to any substantial question of law."

8.3. Reference was also made by the Ld. Counsel to 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.

9. Per contra, Ld. Sr. D.R pointed out to the decision of Hon'ble Supreme Court in the case of Saravana Spinning Mills Pvt. Ltd. reported in [2007] 293 ITR 201(SC) relied upon by the Ld. CIT(A) and submitted that the findings given by the Ld. CIT(A) are to be upheld as the expenses are towards renovation of rooms which are for over hauling the entire set up of the assessee and therefore such renovation do not qualify to be called as repair or replacement and allowed as revenue expenditure.

10. We have given our thoughtful consideration to the material placed on record and find force in the submission made by the assessee including through its written submission. Admittedly, fact is that assessee is in the business of hotel/resort wherein the up-keep or 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 his continuous requirement of the hotel industry.

10.1. In the assessment order in para 3.8, Ld. AO has noted that *"Such replacement could not have been necessitated by normal breakages during the year. At best the tiles could have become dull looking due to long use and the assessee wanted to spruce up the place by installing new flooring tiles. It is also seen that the assessee has also taken up dismantling of wall and also brick work. The above facts bring out the fact that the assessee has replaced the flooring in part of Hotel and made modifications to renovate the hotel to make it more appealing to the customers. This resulted into the improvement of value of the building."*

and held the expenditure as capital in nature. It is also 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 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, respectfully following the decision of Hon'ble Jurisdictional High Court of Bombay, Bench at Goa in the case of Goa Tourism Development Ltd. (Supra) and also of Hon'ble Karnataka High Court in the case of Mac Charles (India) Ltd. (supra), we hold that the expenses which have been treated as capital in nature by the Ld. CIT(A) are to be allowed as revenue expenditure. We also find force from the decision of Hon'ble Madras High Court in the case of Pandiyan Hotels Ltd. vs. DCIT in Tax Case Appeal No. 226 of 2018 dated 16.07.2020 wherein similar issue was dealt holding it in favour of the assessee as revenue expenditure. The 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. Accordingly, the grounds of appeal of the assessee in this respect are allowed.

10.2. Since we have dealt with the merits of the case by allowing the appeal to hold the expenditure incurred as revenue in nature in the given facts and circumstances, the legal issues raised in ground no. 2 and 3 are not adjudicated upon and hence dismissed as such.

11. In the result, the appeal of the assessee is 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: M/s Sankamta Hotel Pvt. Ltd.
2. The Respondent: ACIT, Circle-1, Belagavi
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)