

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**

**आयकर अपीलिय अधिकरण, कोलकाता पीठ ‘बी’, कोलकाता**

[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member ]

श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

**I.T.A. No. 353/Kol/2021**

आयकर अपील संख्या-353/कोल/2021

**Assessment Year : 2017-18**

निर्धारण वर्ष: 2017-18

Kaizen Hotels & Resorts Ltd. (PAN: AA ECS 3843 E)	Vs.	ACIT, Circle-8(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	27.07.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	01.09.2022
For the Appellant/ निर्धारिती की ओर से	Shri Saumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

**ORDER / आदेश**

**Per Shri Rajesh Kumar, AM:**

This is the appeal preferred by the assessee is against the order of the National Faceless Appeal Centre- NFAC-Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 28.07.2021 for the AY 2017-18.

2. The grounds raised by the assessee are as under:

*1(a) That the Ld. CIT(A) erred in confirming the action of the AO in disallowing an aggregating sum of Rs. 42,085/- incurred towards subscription/donation to various puja committees.*

*1(b) That, the Ld. CIT(A) after having observation that such expenses are incurred to keep the local community in good humour and to run business smoothly and efficiently for the purpose of business of the appellant.*

*2(a) That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of the AO in disallowing interest on loan and bank charges aggregating to Rs. 11,89,217/-.*

*2(b) That the Ld. CIT(A) erred in observing that before the AO the appellant has itself confirmed utilization of entire bank loan for construction of Durgapur project till 31<sup>st</sup> December, 2016.*

*3. That the Ld. CIT(A) ought to have directed the AO to allow deduction on account of education cess paid by the appellant while computing the total assessed income for the year under consideration.*

*4. That, the appellant craves leave to alter, amend, rescind and substitute any of the above mentioned grounds and add any further grounds before or at the time of hearing of the appeal.*

2. The issue raised in ground no. 1 is against the confirmation of addition of Rs. 42,085/- by Ld. CIT(A) as made by the AO by disallowing the expenses incurred by way of subscription/donation to various puja committees during the year.

3. Facts in brief are that the assessee is engaged in the business of hotels. During the course of assessment proceedings, the AO noted that the assessee has paid 42,085/- in cash to various organization during the year by way of subscriptions /donations which is not allowable u/s 37(1) of the Act and accordingly made the addition to the income in the assessment framed u/s 143(3) dated 19.12.2019.

4. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO on the ground of the expenses incurred by the assessee by way of subscriptions and donations to various puja organizations and various other bodies in connection with puja festivals could not be explained to be incurred wholly and exclusively to the assessee.

5. After hearing rival parties and perusing the material on record, the undisputed facts are that the subscriptions/donations were paid to various puja pandals/sports association and other local organizations which has local influence. In our view these

expenses are incurred by the assessee to run the business in smooth, seamless and cordial atmosphere which may not be possible otherwise. The expenditure is incurred to keep good relation in the vicinity of business. Moreover it is the assessee who shall decide the expenses to be incurred for the business and not the AO. The case of the assessee finds support from the decision of the Apex Court in the case of *Sasson J. David & Co. Ltd. Vs CIT 118 ITR 261(SC)* wherein the Hon'ble court has held "*it is for the assessee to decide whether any expenditure should be incurred in the course of business. Such expenditure may not be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits the assessee can claim the deductions u/s 10(2)(xv) of the Income Tax Act 1922( now section 37(1) of Act 1961) even though there was no compelling necessity to incur the expenses. The fact that somebody other than the assessee is also benefitted by the expenditure should not come in the way of an expenditure being allowed by way of deduction under the Act if it satisfies otherwise the tests laid down by law.*" Similarly the case of the assessee is also supported by the decision of the Kolkata High Court in the case of *CIT Vs. Bata India Ltd* wherein it has been held that contributions/subscriptions towards community celebrations to keep youth in the neighborhood of the shop happy to ensure smooth conduct of the business, the expenditure can be said to be expenditure required to maintain the business as the same is incurred to keep good relation with the population in the close neighborhood and not to as sales promotion or to solicit new customers. Considering the facts of the case and the decisions as discussed above, we are inclined to set aside the order of Id CIT(A) on this issue and direct the AO to delete the disallowance. Ground no 1 is allowed.

6. The issue raised in ground no. 2 is against the confirmation of addition of Rs. 11,89,217/- by Ld. CIT(A) as made by the AO by disallowing interest on loan on the ground that the same pertains to pre-commencement period of the hotels.

7. Facts in brief are that the assessee has constructed and commissioned a hotel in the month of May, 2016. The AO noted during the assessment proceedings that the assessee has taken a bank loan of Rs. 467 Lakhs for the construction of the Durgapur

hotel project till 31.12.2016. The assessee has incurred expenses to the tune of Rs. 1362.89 Lakhs on the construction of the hotel which have been capitalized under various heads. The AO noted that assessee has charged the sum of Rs. 32.47 Lakhs on account of interest expenses to the profit and loss account which according to AO is contrary to the statement by the assessee that the entire loan was utilized for construction of Durgapur Project till December 31, 2016. According to AO, the said interest should have been capitalized till December, 2016 and AO accordingly calculated the disallowance of interest of loan and bank charges at Rs. 11,89,217/- comprising bank interest component of Rs. 11,75,413/- and Rs. 13,804/- on account bank charges by observing that the assessee has capitalized the interest and bank charges at Rs. 14,50,127/- and Rs. 33,875/- instead of Rs. 26,25,540/- and Rs. 47,679/- respectfully and added the same to the income of the assessee.

8. In the appellate proceedings the Ld. CIT(A) confirmed the order of AO by observing and holding as under:

*“7.8(b) Finding*

*It is a fact that borrowing costs related to acquisition and construction of assets are capitalized as cost of such assets when such assets are ready to be put to use. The Appellant has shown the cost of Durgapur project at Rs. 1362.89 lac. Out of this Rs. 467 lac was from bank loan and remaining Rs. 895.89 lac was from internal accruals and own funds. The AO has held that as on 31.12.2016 the Appellant had incurred expenses which has been capitalized. In the assessment order itself the AO has confirmed that the assessee itself confirmed the utilization of entire bank loan is for construction of Durgapur project till 31.12.2016. The AO has noted that Appellant has debited Rs. 32.47 lacs to P & L account.*

*(c) In appeal the Appellant now contends that the inference drawn by AO that project got completed on 31.12.2016 is factually inaccurate. It was also contended that the AO did not bring any material on record to prove that concerned assets were capitalized on 31.12.2016.*

*(d) As per para 9 of this assessment order, the AO has clearly stated that “the assessee itself confirmed the utilization of entire bank loan fund is for construction of Durgapur project till 31.12.2016. Therefore, the interest component on such loan till 31.12.2016 should have been capitalized with the fixed assets.”*

*(e) These facts clearly show that assessee itself confirmed the utilization of entire bank loan fund was for construction of Durgapur project till 31.12.2016. Now the Appellant has changed the track that this inference drawn by the AO is inaccurate and AO did not bring any material on record to prove that concerned assets were capitalized on 31.12.2016. This appears to be an afterthought on part of Appellant. The Appellant before the AO itself confirmed the utilization of entire bank loan is for constructions of Durgapur project till*

31.12.2016. Once the Appellant itself confirmed this fact, the AO did not need any further material on record to prove that concerned assets were capitalized on 31.12.2016.

(f) In view of the above facts the addition of Rs. 11,89,217/- made by the AO is tenable and is upheld. Ground of Appeal No. 9 is dismissed.”

9. After hearing rival parties and perusing the facts as emerging out of records before us we find that the Durgapur Hotel Project was completed and commissioned by the assessee on 16.05.2016 and the assessee has apportioned interest and other bank charges between two periods) relating to pre-commissioning period of 01.04.2016 to 16.05.2016 and ii) post commissioning from 16.05.2016 to 31.03.2017. We note that the interest expenses and other charges pertaining to period prior to the completion of project were capitalized under various heads of fixed assets as it is apparent from annual accounts and also the basis of capitalization interest on loan which is filed at page 29 of PB. In view of these facts, we are not in concurrence with the order of Ld. CIT(A) and accordingly we set aside the same and direct the AO to delete the addition.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 1<sup>st</sup> September, 2022

Sd/-  
(Sanjay Garg /संजय गर्ग)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 1<sup>st</sup> September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kaizen Hotels & Resorts Ltd. 12, J.L. Nehru Road, Kolkata-700013
2. Respondent – ACIT, Circle-8(1), Kolkata
3. Ld. CIT(A)- , Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata