IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.864/Del/2020
Assessment Year: 2016-17

ACIT, CC-13, New Delhi.	Vs.	A.B. Hotels Limited, Radisson Hotel, National Highway-08, Mahipalpur, New Delhi. PAN: AAACA2729B
(Appellant)		(Respondent)

Assessee by	:	Ms Kanika Jain, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	29.08.2022
Date of Pronouncement	:	24.11.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the Revenue is directed against the order dated 12.12.2019 of the CIT(A)-37, New Delhi, relating to Assessment Year 2016-17.

2. The grounds of appeal read as under:-

"1. That the ld.CIT(A) has erred in law and facts in deleting disallowances of Rs.7,67,21,258/- which pertains to house property income but wrongly claimed in the P&L by the assessee.

2. That the ld.CIT(A) has erred in law and facts in ignoring the fact that the principle of res judicata is not applicable in the income tax proceedings.

3. a) The ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.

b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

3. The ld. Sr. DR, supporting the assessment order, submitted that the AO has made disallowance of 10% of operating expenses, employee benefit expenses and administrative & general expenses, keeping in view that the total rental income is approximately 10% of total revenue/income including rental and hotel business. The ld. Sr. DR vehemently pointed out that the ld.CIT(A) has granted relief to the assessee without any justified and reasonable basis ignoring the fact that the principle of *res judicata* is not applicable to the income-tax proceedings. The ld. Sr. DR also submitted that the assessee has claimed deduction u/s 24(a) of the Act, but, has not apportioned the relevant part of the expenses incurred by it and claimed in the P&L of operating expenses, employee benefit expenses and administrative & general expenses, therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO. The ld. Sr. DR also submitted that the ld.CIT(A) while granting relief to the assessee, has considered irrelevant facts and circumstances and by observing that the AO for AY 2014-15 and 2015-16 had accepted the method of accounting after scrutiny ignoring that principle of *res judicata* is not applicable to the income-tax proceedings.

Therefore, the impugned first appellate order being perverse and devoid of merits, may kindly be set aside by restoring that of the AO.

4. Replying to the above, the ld. AR supported the first appellate order and submitted that in the scrutiny assessment orders u/s 143(3) of the Act, the AO had not made any disallowance or addition on this issue in the immediately preceding assessment year 2014-15 and 2015-16 and had accepted the method of accounting without any dispute. Therefore, the AO cannot take a different or deviated view on the similar facts and circumstances keeping aside the principle of consistency which is followed by the tax authorities as per the tax jurisprudence. The ld. AR, briefly reiterating her submissions made before the ld.CIT(A), submitted that this is a fundamental rule of justice and it is well established that there has to be more than bare suspicion to support and findings of the assessing authorities to make any addition in the hands of the assessee. Placing reliance on the various judgements of the Hon'ble Supreme Court and order of the ITAT Delhi Benches in the case of *Widex India (P) Ltd. vs. DCIT, reported as MANU/ID/0870/2011*, the ld. AR submitted that the suspicion backed by no evidence cannot be a cogent reason for making disallowance and where the expenses were duly vouched and the audited accounts were duly supported by the vouchers have been made available to the AO who has not rejected the books of accounts, then, he was not justified in estimating the disallowance to be made as, apart from mere suspicion, there is no adverse material or fact on record. Further,

placing reliance on the judgement of the jurisdictional High Court of Delhi in the case of *PCIT vs. Jatin Investment Pvt. Ltd., vide ITA Nos.43/2016 and 44/2016*, the ld. AR submitted that where the AO could not point out any discrepancy in the evidences relied upon by the assesee and it was held that purely on the basis of surmises and conjectures no transaction can be held as bogus unless the same is proved on the basis of sound reasoning and evidence on the part of the AO before making the addition. Further placing reliance on the decision of the Hon'ble Madras High Court in the case of *Sanjeevi & Co. vs. CIT, 62 ITR 156,* the ld. AR submitted that reasonableness of expenditure for the purpose of determining whether in fact the loan was for the purpose of business. Placing reliance on another judgement of the Hon'ble Madras High Court in the case of *CIT vs. Global Motor Service Pvt. Ltd., reported in 100 ITR 240*, the ld. AR submitted that it is not for the Revenue to question the commercial expediency. The ld. AR has also placed reliance on the decision of the jurisdictional High Court of Delhi in the case of *CIT vs. Dalmia Cement (P) Ltd*. to submit that once it is established that there was a nexus between the expenditure and the purpose of business, the Revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of Board of Directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of a case. Lastly, placing reliance on the judgement of the Hon'ble Supreme Court in the case of *SA Builders Ltd. vs. CIT, (2007) 288 ITR 1*, the ld. AR submitted that the Hon'ble Supreme Court, by referring to the judgement of

jurisdictional High Court in the case of *Dalmia Cement (P) Ltd. (supra),* explicitly held that the Revenue authorities must not look at the matter from their own view point, but, that of a prudent businessman.

5. Placing rejoinder to the above, the ld. Sr. DR submitted that there is no quarrel regarding the proposition rendered by the Hon'ble jurisdictional High Court of Delhi, Hon'ble Madras High Court and the coordinate Bench of the Tribunal which had been rendered under peculiar facts and circumstances of the relevant cases. The ld. DR further pointed out that in the present case, the assessee had received rental income and had claimed deduction u/s 24(a) of the Act on the entire rental income. The ld. Sr. DR further submitted that from the balance sheet and statement of Profit & Loss Account for the year ended 31.03.2016, it is clearly discernible that the assesse had shown an amount of Rs.2,47,24,241 in Table 20 to the accounts as maintenance charges received, undisputedly, this amount has been received from the tenants from whom rental income was received. The ld. Sr. DR further pointed out that the assessee, in the P&L Account, had claimed other operating expenses, employee benefit expenses and administrative general expenses totaling to Rs.76,72,12,582/- which includes expenses incurred by the assessee towards maintenance of rental operation of the building complex of the assessee. The ld. Sr. DR submitted that the AO was right in disallowing 10% of common expenses as the assessee has not maintained any separate books of accounts clearly establishing the expenses incurred towards

maintenance of rental building and all expenses have been incurred from one pool on both the parts of complex i.e., of rental area as well as hotel and restaurant area. The ld. Sr. DR further submitted that keeping in view the amount of rental income earned by the assessee, it cannot be safely presumed that the amount of expenses towards maintenance of rental are could be at par or less than the amount received by the assessee towards maintenance charges of Rs.2,47,24,241/-. Therefore, the AO was right in making further disallowance out of expenses claimed by the assessee in the P&L Account. The ld. Sr. DR submitted that the principle of consistency has to be respected by the tax authorities, but, if mistake has been done in the preceding assessment year, then, it would not be wise to repeat the same mistake consistently in the subsequent assessment year, therefore, the AO was right in making disallowance and the ld.CIT(A) was not correct in deleting the same without any justified reason and basis. Therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO.

6. On careful consideration of the above submissions and on perusal of the orders of the authorities below, we find from the assessment order that the ld. AO had made the following observations and findings:-

> *"7. The assessee submissions have, been considered and not found tenable on the following issues because of the following reasons:-*
> *(i) Disallowance of expenses: The assessee has submitted that it has already disallowed Rs. 8,80,58,254/-as proportionate expenses relating to rental income but from the computation of income furnished, it is seen that the expenses disallowed are only on a/c of*

municipal taxes and lease rent which the assessee has paid for the hotel property. Further, the assessee's contentions are wrong and incorrect that it has disallowed all the expenses related to earning of the rental income. The total receipts of the assessee company are 86 crores from the revenue of operations and Rs 12.56 crores from the other income. The major part of the other income is the rental income of Rs 9,86,07,579/- and maintenance charges received of Rs. 2.47 crores. Thus from the perusal of the P&L a/c it is absolutely clear that the assessee is showing losses of Rs. 12 crores if we exclude the other income. Further, similar is the position last year wherein against the income from operations of Rs. 91.72 cr the assessee, has claimed total expenses of Rs. 104 cr which results in operational losses of around Rs. 13 cr. Thus it appears that it is the scheme of the assessee to show all the expenses against the rental income and in the P& L a/c and treat the same as business expenses.

Further, it is highly unrealistic even to think that the assessee is not incurring any expenses against the rental income of around Rs. 10cr which it is earning from the premises given on rent to other persons. In fact, the assessee scheme of arrangement is to first book all the expenses incurred on a/c of giving premises on rent in the P&L a/c and afterwards also claim the 30% deduction allowed on income from house property. The assessee company is the owner of a 5 star hotel and given a part of the hotel to many persons on rent. In 5 star hotels the rent is charged on the higher side but at the same time the tenants also require a very high degree of maintenance services. But, it is highly improbable that no amount is incurred by the assessee towards such huge rental income. Further, even though the assessee has booked the maintenance charges received of Rs. 2.47 crores but, it is not clear from whom such charges are received as the assessee has furnished the required details. Also, even if for a moment it is considered that these maintenance charges are incurred or partly incurred for earning of rental income but considering the rental income and the maintenance charges received together still the expenses are very less as compared to the rental income. Thus, in all probability the assessee has been booking the maintenance/other expenses incurred in earning of rental income in the P&L a/c and at the same time also claiming deductions u/s 24b which results in double deduction.

In spite of being specifically asked the assessee has not furnished the details of the expenses incurred for earning of rental income. Accordingly, I have no other option but to disallow the expenses claimed by assessee on a/c of other operating expenses of Rs. 41,75,19,132/-, employee benefit expenses of Rs 20,10,42,449/- and administrative and general expenses of 14,86,51,001/- totalling to common expenses of Rs. 76,72,12,582/-. Further, the total rental income is Rs.9,86,07,579/- and the total income is Rs. 98,81,79,832/- and the percentage of, rental income, total income is around 10%. Accordingly, on the same basis 10% expenses amounting to Rs. 7.67 crores are hereby treated as pertaining to earning of rental income a a/c and added back in the total income of the assessee."

7. The findings recorded by the ld.CIT(A) in the first appellate order while granting relief to the assessee are as follows:-

"Findings:

5. Ground No. 1: pertains to disallowance expense amounting to Rs.7,67,21,258/-. The fact of the case that the appellant had claimed business expenses under the heads 'operating expenses' of Rs.41,75,19,132/-, 'employee benefit expenses' of Rs.20,10,42,449/- and 'administrative and general expenses' of Rs. 14,86,51,001/- totaling to Rs.76,72,12,582/-. The AO has made disallowance of 10% of these expenses amounting to Rs.7,67,21,258/- on the ground that since the rental income earned by the appellant constituted 10% of the total income earned by the appellant, a proportionate disallowance is warranted. The AO is of the view that the assessee is claiming double deduction by booking maintenance/other expenses in the P&L account incurred for earning rental income and at the same time claiming deduction u/s 24b of the Act.

5.1 In appeal, the Ld. AR of the appellant submitted that sufficient details were filed before the AO by various letters during the course of the assessment proceedings and AO has not pointed out any single instance of expenses being related to the rental income. The appellant was already claiming a deduction u/s 24 of the Act on the rental income earned by it and had voluntarily made disallowance of expenses debited on account of earning of such rental income i.e. expenses incurred towards municipal taxes and the lease rent of such portions rented out. The appellant had made a disallowance of

Rs.88,05,254/- on this account. It is vehemently argued by the Ld. AR that the assessee has not incurred any expense separately on account renting activity. The assessee enters into separate maintenance agreements for housekeeping activities and the maintenance receipt from tenant is separately shown as business income. It is submitted that the concerned parties taking the premises on rent had entered into two separate agreements, one for rent and one for maintenance services and the appellant has duly reflected income for operations separately which is on account of such house-keeping activities and the same amounts received from the parties has been in fact incurred towards maintenance activities and claimed as expenses. It is further submitted that the AO's decision is merely on surmises, guess work as evident from the words used by the AO in the assessment order and no live nexus between expenses allegedly incurred for earning rental income has been established. The Ld. AR also relied upon various case laws.

5.2 It is further submitted that the appellant has been claiming similar treatment of claiming of rental income and disallowance of similar expenses in all previous assessment years and in none of the said previous assessment years, any disallowance has been made. The Ld. AR also submitted the assessment order u/s 143(3) for A.Yrs 2014-15 & 2015-16 in which no such disallowance were made by the AO. It is further argued that in all the earlier assessment years since inception the case has been scrutinized u/s 143(3) and the AO did not draw any adverse inference on this issue.

5.3 I have carefully examined the finding of the AO, submission of the Ld. AR, documents placed before me and the case laws relied upon. The Ld. AR also filed the copy of letters filed before AO. The appellant is running a hotel and a commercial block. The appellant is earning revenue from hotel business and rental income from commercial block. The rental income earned is shown as income from house property and on this income deduction u/s 24 of the Act is claimed and further the municipaltaxes is also claimed. The appellant is also receiving maintenance charges from tenants by way of agreement and the same is shown as business income and the related expenses is being charged to the normal head of accounts debited to P&L account. The Ld. AR submitted that this is as per Industry norms and hotel industry follow this practice where maintenance expenses are passed to tenants and recovered from them. On the other hand, the AO has worked out disallowance on the basis of some formula that since percentage of rental income to the total income is 10%,

therefore, the AO assumed that 10% of the expenses relates to rental income. The assumption of the AO is without identifying any expenses attributable to rental income. I find such disallowances without identifying any specific items wrongly claimed, can not be sustained. It is also noted that in earlier years the AO has been accepting the working of the appellant. Nothing specific has been brought on record by the AO to substantiate his finding. Such additions are not sustainable in the eyes of the law. It is also noted that the AO for A.Yrs. 2014-15 & 15-16, had accepted this method in earlier assessment years after scrutiny.

5.4 In view of the above discussion, I am inclined to accept the argument of the Ld. AR. Therefore, the addition is deleted and the ground No.1 of the appellant is allowed."

8. We note that undisputedly, the assessee received rental income of Rs.9,86,07,579/- and received maintenance charges of Rs.2,47,24,241/-. We also find that the assessee has *suo moto* disallowed part of lease rent of rental portion and municipal taxes related to rental portion and had also claimed deduction of 30% for repair u/s 24(a) of the Act in the computation of income. However, being dissatisfied by the *suo moto* disallowance made by the assessee and exemption claimed u/s 24 of the Act, the AO picked up the issue and observed that the assessee had only shown receipt of Rs.2,47,24,241/- as maintenance charges from the tenants and has incurred expenditure towards maintenance from the common pool which consisted of expenditure towards hotel area as well as rental area, therefore, the AO proceeded to make disallowance of 10% of total claim of expenditure on operating expenses, employee benefit expenses and administrative & general expenses

9. First of all, we may point out that the principle of *res judicata* does not apply to the income-tax proceedings, but, rule of consistency is always respected by the tax authorities. It is also amply clear from the various propositions rendered by the Hon'ble Supreme Court and High Courts that the reasonableness of any expenditure has to be looked into from the point of view of a prudent businessman and not from the view point of taxing authorities. At the same time, we cannot ignore that the AO is not only an AO, but, he is an investigator and adjudicator also who is duty bound to examine the issue from all angles to stop leakage of revenpue and evasion of tax. In the present case, the assessee had shown and included in the other income an amount of Rs.2,47,24,241/- received as maintenance charges, but, the expenditure towards maintenance of rental area has been incurred from the common pool of expenses which provoked the AO to make the impugned disallowance.

10. From the written submissions filed by the ld. Counsel of the assessee, we observe that the first limb of the argument is that since the assessee has already claimed deduction u/s 24 of the Act on the rental income earned by it and it had voluntarily made disallowance of expenses debited on account of earning of such rental income, then, any further disallowance would amount to double disallowance which cannot be made as per the settled principles of law. On this contention, we are of the view that undisputedly, from the computation of taxable income, the assessee, for AY 2015-16, placed at page 19 of the assessee's paper

book, it is clear that the assessee has suo moto made disallowance of lease rent on rental portion and municipal taxes related to rental portion and has made disallowance of Rs.7,64,147 and Rs.80,41,107/- totaling to Rs.88,05,254/-. But, from the assessment order, we observe that the AO has not made any allegation regarding proportionate lease rent and municipal taxes related to rental portion, but, the disallowance of 10% of total expenses incurred by the assessee on other operating expenses, employee benefit expenses and administrative & general expenses has been made. Therefore, the argument of double disallowance has no legs to stand and, thus, we dismiss the same.

11. The next contention of the ld. Counsel is that no depreciation was claimed on the commercial block. Obviously, when the assessee is claiming deduction u/s 24 of the Act on the rental income earned by it, then, it is not entitled for claiming any depreciation on the commercial block from which rental income has been earned. From the assessment order, we also observe that it is not the case of the AO that the assessee has claimed depreciation on the rental commercial block and, therefore, he is making disallowance of proportionate expenditure. Therefore, this contention of the ld. Counsel of the assessee is also not acceptable.

12. It is also the contention of the ld. Counsel that actual expenses incurred towards renting activity was under separate rental agreement and actual expenses of a mere renting activity are much lesser. It has also been contended that the AO

has made *ad hoc* disallowance of 10% of expenditure incurred on operating expenses, employee benefit expenses and administrative & general expenses on the basis of surmises and conjectures without any cogent reason. Therefore, the ld.CIT(A) was right in deleting the same. It has also been contended by the ld. Counsel in the written submissions of that the commercial expediency of expenditure has to be seen from the angle of a businessman and the AO cannot sit in the armchair of a businessman for evaluation of commercial expediency of an expenditure.

13. On the other hand, it is the contention of the ld. Sr. DR that the onus was on the assessee to show that actual expenses of renting activity are less than the amount reflected as income from maintenance charges of Rs.2,47,24,241/-. The ld. Sr. DR also submitted that undisputedly, the actual expenses incurred towards renting activity under a separate maintenance agreement, but, the onus was on the shoulder of the assessee to show that the amount received as maintenance charges shown in the P&L Account is equal or less than the actual expenses on the rental portion to conduct business of renting activity by the assessee. The ld. Sr. DR has drawn our attention towards Schedule 21, 22 and 25 of the assessee's audited report and submitted that as per *suo moto* disallowance calculated at page 19 of the assessee's paper book, the assessee has disallowed 14.65% of lease rent of rental portion and 64.67% of municipal taxes which shows that the area of rental portion wherein a rental activity has been undertaken by the assessee is of huge

size, therefore, the assessee has apportioned and *suo moto* disallowed 64.67% of municipal taxes and such big area cannot be maintained properly the onus is on the assessee to show that the actual expenditure on other operating expenses, employee benefit expenses and administrative & general expenses was equal or lesser in comparison with the maintenance charges of Rs.2,47,00,000/- received by the assessee. Therefore, the 10% disallowance made by the AO was quite justified and reasonable. It has also been contended by the ld. Sr. DR that the rule of consistency has to be followed by the tax authorities, but, if a factual mistake has been made by the AO in the preceding or subsequent, then, the same cannot be allowed to be persisted blindly following the rule of consistency. Therefore, the first appellate order may kindly be set aside by restoring that of the AO.

14. On careful consideration of the above rival submissions, first of all, we may point out from the audited accounts of the assessee that the assessee has shown 'other operating expenses' in table 21, employee benefit expenses in table-22 and administrative & general expenses in table 25 which are reproduced for the sake of completeness as follows:-

"21. Other Operating Expense

Particulars	31.03.2016	31.03.2015
Power and fuel	3,52,25,035	4,36,98,585
Electricity charges	9,61,04,588	8,73,16,445
Insurance	18,73,930	13,67,851
Repairs and Maintenance		
-Building	76,17,554	87,3 7,977
-Plant & machinery	2,41,58,930	2,73,34,063
-Others	66,71,205	54,61,946
Food & Beverages	12,37,86,890	12,95,70,636

House-keeping Expenses	1,75,13,820	1,85,20,973
laundry charges, linen and uniform	60,62,549	1,05,28,800
Horticulture expenses	50,71,181	62,28,882
Rates &. Taxes	2,22,09,858	2,13,39,724
Royalty	5,93,81,904	6,37,23,814
Miscellaneous expenses	1,18,41,692	1,35,68,962
Total	41,75,19,132	43,73,75,658

22 *Employees Benefit expenses*

Particulars	31.03.2016	31.03.2015
Salaries & Allowances	18,42,68,180	18,60,65,668
Contribution to provident & other funds	94,25,619	92,44,890
Contribution to Gratuity fund	25,31,212	44,07,241
Staff welfare expenses	48,17,438	51,23,388
Total	20,10,42,449	20,48,41,187

23 *Finance Cost*

25 *Administrative General Expenses*

Particulars	31.03.2016	31.03.2015
Subscription and membership fee	22,60,246	23,79,425
Telephone and Postage	35,13,030	37,97,578
Printing and Stationery	48,57,774	46,13,295
Travelling and Conveyance	2,69,11,711	2,74,60,627
Legal and professional fee	1,65,49,961	1,64,11,571
Vehicle running & maintenance expenses	38,48,673	48,21,424
Rent paid	83,32,601	81,12,769
Security expenses	1,13,23,682	1,07,53,147
Audit fee		
-For Statutory audit	4,12,500	4,12,500
-For Tax audit	1,37,500	1,37,500
Board Meeting fees	3,60,700	5,40,000
Donations	30,200	2,35,850
Bank charges	8,19,830	4,67,913
Brokerage	35,56,474	37,83,487
Bad debts written off	5,05,616	-
Other Administrative General expenses	14,19,767	14,70,532
Advertising Promotional expenses	1,73,85,283	1,98,68,287
Commission paid	4,46,98,820	4,74,55,388
Loss on foreign exchange	7,41,959	2,01,019
Loss on sale of fixed assets	7,57,018	4,67,921
Other Expenditure	2,27,747	1,81,764
Total	14,86,51,091	15,35,71,997

15. From the above, it is clear that the assessee has made expenditure of Rs.76,72,12,580/- on these three broad heads. From the table 20 we also note that the assessee has shown maintenance charges received as Rs.2,47,24,241/- as 'other income.' On being asked by the bench, the ld. Counsel of the assessee, in

all fairness, admitted that the assessee has incurred maintenance expenses against maintenance charges received from the common pool which includes other operating expenses, employee benefit expenses, administrative & general expenses. From the tables as reproduced hereinabove, it is clear that some of the expenditures are exclusively pertaining to hotel business such as food and beverages, housekeeping expenses, laundry charges, linen and uniform, as shown in table 21 of the audit report. But, in all the three tables, maximum expenditure pertains to the hotel business and rental operation which has not been apportioned or segregated by the assessee to show that the actual maintenance charges received by it are equal or less than the actual expenditure incurred by the assessee from common pool towards maintenance of rental area which contains other operating expenses, employee benefit expenses and administrative & general expenses. In this situation, when the assessee is not discharging its onus to show the expenditure incurred on rental operation, maintenance is equal or less than the actual amounts received against maintenance charges, then, the AO is very well entitled to make proportionate disallowance in this regard keeping in view the surrounding facts and circumstances and totality of the situation before him on the issue.

16. Identical situation arose before the ITAT Mumbai Bench in the case of Runwal Developers P. Ltd. vs. ACIT reported as (2016) 50 ITR (Trib) 260 (ITAT Mum) and the Tribunal restored the issue to the AO for proper verification,

examination for limited purpose of examining the nature of expenses as shown in the P&L Account for making appropriate disallowance.

17. At the cost of repetition, we may again point out that the onus was on the shoulders of the assessee to show that the actual expenditure incurred on rental operation from the common pool of expenses was equal or less than the amount received as maintenance charges and shown in the P&L Account. But, in the present case, the assessee has not discharged its onus and we are of the view that blindly following the rule of consistency a mistake cannot be allowed to be persisted when the leakage of revenue is clearly discernible.

18. Therefore, in view of the above, we reach to a logical conclusion that the ld.CIT(A) was not correct and justified in deleting the disallowance by observing that the AO, without identifying any expenses attributable to rental income, assumption of the AO without identifying any expenses attributable to rental income and such disallowance without identifying any expenses cannot be sustained. As the ld. CIT(A) has ignored some factual position as noted above from the audited accounts of the assessee and has completely ignored the audited financial statements and accounts of the assessee especially table 21, 22 and 25 wherein some expenses are clearly identifiable and attributable to hotel business as well as rental activity and which has been incurred from the common pool and the assessee has not made any sustainable and acceptable apportionment to establish that the actual maintenance charges received by it are equal or less than

the actual expenses incurred from common pool on the rental operation towards other expenses, employee benefit expenses and other administrative & general expenses. Therefore, the issue is restored to the file of the AO with a direction to identify the expenses pertaining to hotel and rental activity from common pool as per table 21, 22 and 25 of accounts and to make proportionate and appropriate disallowance on rental area/portion maintenance. Accordingly, the appeal of the Revenue is allowed for statistical purposes with the directions to the AO as stated above.

19. In the result, the appeal filed by the Revenue is allowed for statistical purposes only.

Order pronounced in the open court on 24.11.2022.

Sd/-	Sd/-
(PRADIP KUMAR KEDIA) ACCOUNTANT MEMBER	(C.M. GARG) JUDICIAL MEMBER

Dated: 24th November, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi