

**आयकर अपीलिय अधिकरण, कोचीन पीठ, कोचीन में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**COCHIN BENCH, COCHIN**

**माननीय श्री सतबीर सिंह गोदारा, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI SATBEER SINGH GODARA, J.M**  
**AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, A.M**

आयकर अपील सं./ **ITA Nos.186/Coch/2017**  
(निर्धारण वर्ष / **Assessment Year: 2008-09**)  
&

आयकर अपील सं./ **ITA Nos.187/Coch/2017**  
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

<b>Hotel and Allied Traders Pvt. Ltd.</b> C/o Casino Hotel, Willingdon Island, Cochin-3.	<b>बनाम/</b> Vs.	<b>ACIT</b> Circle-1(2), Kochi.
<b>स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACH-6770-P</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	None
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Smt. J.M. Jamuna Devi (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	09-11-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	09-11-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2008-09 & 2009-10 arises out of separate orders passed by learned Commissioner of Income Tax (Appeals)-1, Cochin on 18-03-2017 in the matter of separate assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act. However, the facts as well as issues are

substantially the same in both the years. At the time of hearing, none appeared for the assessee. Accordingly, the appeals were heard with the able assistance of Ld. Sr. DR who pleaded for dismissal of the appeals. The assessee being resident corporate assessee is stated to be engaged in hotel and restaurant business.

2. Upon perusal of grounds of appeal for AY 2008-09, we find that two issues fall for our consideration i.e., i) Disallowance of Rs. 19.71 Lacs; ii) Disallowance of Rs.5.11 Lacs. After considering material on record, the same are adjudicated as under.

### **3. Disallowance of Rs. 19.71 Lacs:**

3.1 An amount of Rs.19.71 Lacs was due to assessee from its subsidiary company CGH Earth International GMBH. The amount represents value of goods sent to subsidiary entity and expenses incurred on behalf of subsidiary entity. The assessee submitted that amount was advanced in the course of promoting the subsidiary company but the venture was abandoned and accordingly, the amount was written off as bad debts. However, since the primary conditions of Sec.36(2) were not fulfilled, the same was disallowed by Ld. AO. The provisions of Sec.36(2) provide that write-off of bad debts would not be allowed as deduction unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money- lending which is carried on by the assessee. The Ld. CIT(A) confirmed the same on the ground that it was on capital account.

3.2 From the fact, it emerges that the assessee has claimed bad debts u/s 36(1)(vii) which has been denied on the ground that the conditions of Sec.36(2) were not fulfilled by the assessee. We find that certainly the conditions of Sec.36(2) were not fulfilled since the amount represents value of goods sent to subsidiary entity and expenses incurred on behalf of subsidiary entity. Therefore, the deduction u/s 36(1)(vii) has rightly been denied.

3.3 In the written submissions, the assessee has made alternative argument that the subsidiary was promoted to promote the brand CGH Earth and to bring more tourism and business to the assessee by opening a restaurant and a marketing wing for the hotel chain in Germany. The formation of subsidiary entity was in the normal course of business with a view to improve the profitability. The loss arising therefrom should be viewed as a loss of revenue in nature and not a capital loss since the investments were in furtherance of business interest of the assessee. The main purpose of the investment was not to acquire any manufacturing capacity but to carry on a new business. It was solely to boost the assessee's existing business and to make business more profitable. As such, the investments were in normal course and meant to improve the assessee's business. Accordingly, the loss thereof should be viewed as revenue loss. To support the same, reliance has been placed on the decision of Chennai Tribunal in **Refex Industries Ltd. vs. DCIT (ITA Nos.2938 & 2939/Chny/2017)**, a copy of which has been placed on record.

3.4 We find strength in the alternative argument of the assessee that the loss was in normal course of business with a view to boost assessee's profitability. The amount thus expended by the assessee

has been shown under the head 'Loans and Advances' and the assessee's claim hinges more on the provisions of Sec.28 or Sec.37(1) and not on Sec.36(1)(vii). The lower authorities have failed to consider this aspect of assessee's argument. Considering the purpose for which the subsidiary entity was floated, it could be concluded that the whole purpose of the investment was to improve business profitability and not to acquire any manufacturing facility. Therefore, considering the cited decision of Chennai Tribunal, this claim is to be accepted as revenue loss and hence, an allowable deduction. We order so. This ground stand allowed. This issue arises in AY 2009-10 also and accordingly, our adjudication as above shall mutatis mutandis apply therein also.

**4. Disallowance of Rs. 5.11 Lacs:**

4.1 The assessee claimed loss incurred in investment in subsidiary company. The assessee promoted a subsidiary company in Germany and made equity investment. Since the venture failed, the investment thus lost was claimed as an expenditure. The Ld. AO disallowed the same on the ground that it was capital item. The Ld. CIT(A) confirmed the same but directed Ld. AO to treat the loss as long-term capital loss which would be allowed to be carried forward.

4.2 We find that Ld. CIT(A) has clinched the issue in correct perspective. The loss of equity investment could not be allowed as revenue expenditure. The same is in capital field for which adequate directions have been issued by Ld. CIT(A). The same do not require any interference on our part. This issue stand dismissed. The appeal stands partly allowed in terms of our above order.

**5. Assessment Year 2009-10**

In this year, the additional issues that arises for our adjudication are- i) disallowance of current repairs; ii) Assessment of Income Tax Refund. The same are adjudicated as under.

**6. Disallowance of Current Repairs**

6.1 The assessee claimed an amount of Rs.101.87 Lacs as revenue expenditure which is addition to building and electrical fittings on leasehold premises. The Ld. AO, invoking Explanation-1 to Sec.32(1) held that capital expenditure incurred on a leased building was to be capitalized and depreciation would be allowed. Therefore, the amount of Rs.101.87 Lacs was disallowed. The Ld. CIT(A) confirmed the same but directed Ld. AO to allow deprecation on capital component of expenditure. Aggrieved the assessee is in further appeal before us.

6.2 From the facts, it emerges that the assessee has incurred expenditure on existing building which is erected on leased land. This being so, Explanation-1 would apply since the nature of expenditure is capital expenditure. Therefore, the expenditure is to be capitalized and depreciation would be allowable to the assessee. The Ld. AO is directed to allow depreciation on this expenditure. The assessee is directed to provide requisite details. This ground stand partly allowed.

**7. Assessment of Income Tax Refund**

7.1 The assessee received interest on Income Tax Refund for AY 2006-07 for Rs.12.54 Lacs as per intimation u/s 143(1). As per order u/s 143(3), further amount of interest was Rs.8.62 Lacs. However, none of the interest was offered to tax on the ground that the order u/s 143(3) was in further appeal. Rejecting the same, Ld. AO treated the aggregate interest of Rs.21.17 Lacs as income of the assessee.

7.2 The Ld. CIT(A) held that the amount would be taxable on cash basis i.e., whenever the same is received by the assessee. As per the decision of Hon'ble Kerala High Court in **Smt. K. Devayani Amma vs. DCIT (328 ITR 10)**, interest u/s 244A would be assessable in the year in which the refund was granted. The Ld. CIT(A) noted that the figure of Rs.21.17 Lacs was erroneous computation since component amount of Rs.8.62 Lacs was a reduction from earlier amount of Rs.12.54 Lacs. The Ld. CIT(A) directed Ld. AO to examine whether the interest of Rs.12.54 Lacs was assessed to tax in AY 2008-09. If so, then no further addition would be made in this year. If not, necessary action was to be taken to assess the amount of tax and interest for subsequent assessment years 2009-10 onwards in the manner provided in the statute. Accordingly, the ground was allowed. 7.3 The only grievance of the assessee is that interest should be assessed to tax only on the respective assessment reaching finality. We find that this argument run contrary to the afore-said decision of jurisdictional High Court and therefore, the same is not to be accepted. This ground stand dismissed. The appeal stands partly allowed in terms of our above order.

### **Conclusion**

8. Both the appeals stand partly allowed in terms of our above order.

Order pronounced on 09<sup>th</sup> November, 2022.

Sd/-

(SATBEER SINGH GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

Cochi; दिनांक / Dated : 09-11-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

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*By Order*

*Assistant Registrar  
ITAT, Cochin*