

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1013/Del/2020

[Assessment Year : 2016-17]

M/s. Boutique Hotels India Pvt.Ltd., B-106, Gujranwala Town, Part-1, Opp.Model Town 2, New Delhi-110049 PAN-AAACH2439K	vs	ACIT, Circle-5(1), New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri Rohit Golecha, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	18.01.2023	
Date of Pronouncement	31.01.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2016-17 is directed against the order of Ld. CIT(A)-2, New Delhi dated 23.08.2019.

2. The assessee has raised following grounds of appeal:-

1. *“On the facts and circumstances of the case as well as in law the Ld. CIT(A) erred in confirming action of the Learned AO in making disallowance of bad debts amounting to Rs. 13,68,235/-. Reasons assigned by him for doing the same are wrong and insufficient.*
2. *Without prejudice to ground no. 1, since the said claim related to the business of the appellant, the Ld. CIT(A) erred in confirming action of the Ld AO in not allowing the same under section 37(1) of the Act.*
3. *On the facts and circumstances of the case as well as in law the Ld. CIT(A) erred in confirming action of the Learned AO in making addition of advance given to associate companies amounting to Rs. 8,75,027/-. Reasons assigned by him for doing the same are wrong and insufficient.*

4. *On the facts and circumstances of the case as well as in law the Ld. CIT(A) erred in confirming action of the Learned AO in not allowing set off of brought forward losses to the assessed income of the appellant Company.*
5. *The order passed by the Learned AO. and confirmed by the Ld. CIT(A) is devoid of any merit, arbitrary, uncalled for and bad in law and therefore the appellant be given the relief as prayed for.*
6. *Appellant craves leave to add, alter and/or modify the grounds of appeal on or before the date of hearing of the appeal.”*

3. The present appeal filed by the assessee is barred by limitation. The assessee has filed an application seeking condonation of delay. As per the assessee, the appeal was required to be filed on 19.02.2020. However, the same was filed on 06.03.2020. Thus, the delay of 16 days occurred in filing the appeal by the assessee. In support of the application of condonation of delay, the assessee has filed an affidavit dated 04.03.2020 by Shri Sanket Saxena, S/o-Shri Y K Saxena, Accountant of the assessee company that his uncle was not keeping well and subsequently, expired on 23.02.2020.

4. Ld. Sr. DR opposed this submission in this regard.

5. However, considering the submissions made in the application of condonation of delay and respectfully following the judgement of Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs Mst. Katiji & Ors. 167 ITR 471* and to subserve the principal of natural justice, I condone the delay of 16 days in filing of the appeal.

6. Facts giving rise to the present appeal are that assessee company filed its return of income declaring income at NIL on 30.11.2016. The case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated

30.12.2018. The Assessing Officer (“AO”) made disallowance of bad debt amounting to Rs. 13,68,235/- and disallowance on account of interest free advances amounting to Rs.8,75,075/-. Thus, the AO assessed the income at Rs.22,43,310/-. The basis for disallowance of bad debt by AO is stated that no proof was submitted as to how the bad debts have been taken into taxable income in previous year. The assessee also did not provide correspondence with the concerned parties whose bad debts have been returned off. In respect of disallowance, the AO observed that interest free loan of Rs.8,75,075/- was given to the related parties. However, the assessee has claimed interest payment of Rs.5,19,80,136/- against the outstanding loan of Rs.3,08,712/-.

7. Aggrieved against the findings of AO, the assessee carried the matter before Ld.CIT(A) who after considering the submissions, sustained the addition.

8. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

9. Apropos to **Ground Nos. 1 & 2** raised by the assessee are against the confirming of disallowance of bad debt amounting to Rs.13,68,235/-.

10. Ld. Counsel for the assessee submitted that the authorities below grossly erred in making the disallowance as bad debt, is related to the business of the assessee. It is in respect of non-payment/short payment of the service charges. He contended that if the amount is not allowable as bad debt, it would certainly be allowable u/s 37 of the Act as the business loss. He further contended that both the Authorities below failed to appreciate the fact in right perspective and in arbitrary manner, disallowed the claim of the assessee.

11. Ld. Sr. DR opposed these submissions and supported the orders of the Authorities below. He further contended that it was incumbent upon the assessee to produce the supporting evidences if he was claiming it to be a business loss on account of non-payment of service charges by the customers considering the deficiency in services.

12. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. I find that it is not in dispute that the assessee provided the ledger account of the parties but the AO without making further inquiry, disallowed the claim of the assessee. It is also stated that the amount if it is not considered to be bad debt, even than it is allowable u/s 37(1) of the Act since the expenditure has been incurred for the purpose of business. I am in agreement with the contention of the Ld. Sr. DR that the assessee is required to support its claim regarding business expenditure or the business loss. In the present case, the assessee has treated the amount as bad debt. However, except ledger accounts of the parties, there is no other supporting evidences. Considering the totality of the facts and the finding of the Ld.CIT(A), I deem it proper that the matter be restored to the Assessing Authority for verifying the correctness of the claim of the assessee that the amounting in question was related to the non-payment by the customers who had availed the services of the assessee. The assessee is therefore, directed to furnish the complete details and information regarding the services availed by the customers who did not pay charges on account of any services despite related to the quality of services rendered by the assessee. Thus, Ground Nos. 1 &2 raised by the assessee are allowed for statistical purposes.

13. Now, coming to **Ground Nos.3 & 4** raised by the assessee are against the sustaining of addition in respect of the interest free advances given to the Associate Companies.

14. Ld. Counsel for the assessee submitted that the amount was given out of the own funds. No interest bearing fund was utilized for giving such funds. The AO has made the impugned addition purely on the basis of conjectures and merely, because the assessee has claimed interest expenditure which was incurred for business, cannot be the reason for making disallowance u/s 36(1)(iii) of the Act.

15. Ld. Sr. DR opposed these submissions and submitted that the Authorities below were justified in making and sustaining the addition.

16. In re-joinder, Ld. Counsel for the assessee submitted that it was brought to the notice of the Authorities below that out of the total amount of Rs.8,75,027/-, an amount of Rs.8,38,765/- was outstanding since earlier years and only amount of Rs.36,262/- was advanced during the year. Moreover, the assessee has sufficient own funds to make such advances.

17. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. I find that Ld. CIT(A) has decided the issue by observing as under:-

5. “Disallowance on account of interest free advances

During the assessment proceedings, it was observed that assessee has paid interest of Rs.5,19,80,136/- against loan of Rs.3,08,712/- in current year. Assessee was asked to show the reason for discrepancy. Further, it was observed that interest-free loan of Rs.8,75,075/- had been given to

related parties. Assessee was asked to show cause why proportionate interest should not be disallowed.

Assessee submitted reply which was considered but not fund tenable. Hence, addition of Rs.8,75,075/- is made to the returned income. Penalty proceedings u/s 271(1)(c) are being initiated separately for furnishing inaccurate particulars of income/concealment of income.”

18. The above finding of Ld.CIT(A) is non-speaking and has not adverted to the submission of the assessee. It is stated by the Ld. Counsel for the assessee that the assessee is having sufficient own funds to make interest free advances. Further, the majority of the advances related to the earlier years. I therefore, considering the totality of the facts, set aside the orders of the Authorities below and restore this issue to the file of AO to verify the correctness of the claim of the assessee that majority of the advances were made in the earlier years and also to verify whether the assessee was having sufficient own funds to make such advances and if it is found correct, the AO would delete the disallowance. Thus, Ground Nos.3 & 4 raised by the assessee are allowed for statistical purposes.

19. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31st January, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI