

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.544/Kol/2022
Assessment Year: 2017-18**

Bhartiya Hotels Limited 9, Ezra Street, (Top floor, Room No. 47), Kolkata- 700001. (PAN: AABCB9077E)	Vs.	Income Tax Officer, Ward- 8(1), Kolkata.
(Appellant) (Respondent)		

Present for:

Appellant by : Shri Manoj Kataruka, Advocate
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 26.12.2022
Date of Pronouncement : 13.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA.NFAC/S/250/2022-23/1045432576(1) dated 13.09.2022 passed against the order for rectification by DCIT, CPC, Bangaluru u/s. 154 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 14.05.2019.

2. Grounds taken by the assessee are reproduced as under:

“1. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) in dismissing the appeal is without considering the factual submissions on record and therefore the order passed by the CIT(A) is unjust and bad in law.

2. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) while dismissing the appeal and thereby in confirming the action of the Assessing Officer not to allow the credit of TDS of Rs.2,00,00,000/- as a result of loss on account of Capital Gains is erroneous, arbitrary and excessive and bad in law.

3. That the order of the Ld.CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.

4. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.”

3. Brief facts of the case are that assessee filed its original return of income on 27.10.2017 reporting a loss of Rs.4,73,702/-. The said return was processed by Centralised Processing Centre (CPC) of the Department vide intimation dated 04.03.2018 u/s. 143(1) of the Act. Subsequently, assessee came to know about deduction of tax at source of Rs. 2 Cr. by ICICI Bank Ltd. on sale of an immovable property of the assessee situated at 132A, Dr. Annie Besant Road, Worli, Mumbai which was provided as a guarantee to the bank by way of mortgage. It is claimed by the assessee that it was not aware of the sale transaction undertaken by the bank for the satisfaction of its loan liability. It could not claim the refund of Rs. 2 Cr. against the TDS done on sale of its mortgaged property. Assessee filed rectification application u/s. 154 of the Act before the CPC, Bengaluru which was rejected vide order dated 14.05.2019. Aggrieved, assessee went in appeal before the Ld. CIT(A).

3.1. Ld. CIT(A) dismissed the appeal of the assessee for non-prosecution by noting that assessee did not file any reply during the appellate proceedings despite several opportunities provided to it. It is noted in the said order

that case of the assessee was posted for hearing on four different occasions which remained uncomplished. Ld. CIT(A) by applying the decision of CIT Vs. Multiplan India Pvt. Ltd. reported in 38 ITD 320 (Del.) dismissed the said appeal. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee submitted that a paper book containing 55 pages is placed on record to demonstrate its eligibility for the claim of refund of Rs. 2 Cr. which has been deducted at source by the bank on sale of immovable property as stated above. He also referred to the computation of long term capital loss arising on the said sale transaction of the immovable property of the assessee and thus, the entire TDS done in this respect is ought to be refunded to the assessee.

4.1. Ld. Counsel prayed that the matter may be restored to the file of Ld. AO who would verify the claim of the assessee in respect of long term capital loss on the sale transaction of the immovable property and grant it the refund of TDS done in respect of the same. He further stated that since there was no assessment made u/s. 143(3) of the Act, there was no occasion for the assessee to make submission of all the relevant documents to substantiate its claim and, therefore, in the interest of justice, it will be more appropriate that the matter may please be restored to the file of Ld. AO.

5. Per contra, Ld. Sr. DR submitted to restore the matter to the file of Ld. CIT(A).

6. We have heard the rival contentions and perused the material available on record. We note that Ld. CIT(A) has dismissed the appeal of the assessee without dealing with it meritoriously which is not in compliance with the provisions of section 250 and 251 of the Act. Considering the material placed on record, which needs verification of the documents, we find it proper to restore the matter to the file of Ld. AO. Since the matter is restored to the file of Ld. AO for meritorious adjudication, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. AO on the limited issue relating to grant of TDS refund, done on the sale transaction of immovable property of the assessee. Accordingly, we set aside the impugned order of Ld. CIT(A) and restore the matter back to the file of the Ld. AO to decide afresh after affording reasonable opportunity of being heard to the assessee and the assessee is directed to be diligent in the proceedings before the Ld. AO. In the interest of natural justice and fair play, it is also directed that Ld. AO after considering the submissions made by the assessee in respect of its claim made, grant the refund of TDS of Rs. 2 Cr. in accordance with the provisions of law. Accordingly, appeal of the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 13th March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 13th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A),NFAC, Delhi
 4. The DCIT, CPC, Bengaluru
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata