

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE,  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2490/Del/2022  
(ASSESSMENT YEAR 2016-17)**

M/s. Mall Hotel Ltd. 14 <sup>th</sup> New Friends Colony Community Centre New Delhi-110 065 PAN-AADCM 3128R <b>(Appellant)</b>	Vs.	Dy. CIT Circle-16(1) New Delhi <b>(Respondent)</b>
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Appellant by	Mr. Anand Kumar Pandey, Adv.
Respondent by	Mr. S.L.Anuragi, Sr. DR

Date of Hearing	04/05/2023
Date of Pronouncement	17/05/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [Ld. CIT(A)", for short], dated 05.09.2022 for Assessment Year 2016-17.

2. The Grounds taken in this appeal are as under:

*“1. Because on the facts and in circumstances of the case the Ld. CIT(A) has erred while passing the order u/s.250 of the I.T.Act,1961.*

*2. Because on the facts and in circumstances of the case the Ld. CIT(A) has erred for sustaining the disallowance of Rs.1,46,80,921/- u/s.40(a)(ia) of the Income Tax Act, 1961 as disallowed by the Ld. AO in assessment order.*

*3. Because on the facts and in circumstances of the case the Ld.CIT(A) has erred for sustaining the disallowance of Rs.16,27,495/- being 10% of 1,62,74,946/- claimed against maintenance of JHV Mall as disallowed by the Ld. A.O. in assessment order.*

*4. Because on the facts and in circumstances of the case the order passed by the Ld.CIT(A) is bad in law, invalid, without giving proper opportunity of being heard, against the principal of natural justice and equity.*

*5. Because the appellant craves for the indulgence of the Hon'ble Court so as to permit it to raise additional ground/grounds of appeal and/or to verity or modify the grounds already taken.”*

3. Brief facts of the case are that, the assessee Company is engaged in the business of hotels, running of cinema theatre, business income from shops and rental income received from the shops. The assessee filed return declaring income of Rs. 8,16,20,950/-. The case of the assessee was selected for compulsory manual scrutiny under CASS. During the year under consideration the assessee earned rent from various shops to the tune of Rs.4,81,82,741/- and sum of Rs. 1,53,28,744/- as common area maintenance

charges. The A.O. disallowed as expenses pertaining to rental income of Rs. 16,27,495/- and Rs. 1,46,80,921/- as disallowance u/s 40(a)(ia) of the act on account of nonpayment of TDS in Government account.

4. Aggrieved by the assessment order, passed u/s 143(3) of the Act dated 28/12/2018, the assessee preferred an Appeal before the CIT(A). the Ld.CIT(A) vide order dated 05/09/2022 dismissed the Appeal filed by the assessee. Aggrieved by the same, the assessee preferred the Appeal on the grounds mentioned above.

5. The Ground No. 1 is general in nature which requires no adjudication. In the Ground No.2, the assessee contended that the CIT(A) has erred in sustaining the disallowance of Rs. 1,46,80,921/- u/s 40(a) (ia) of the Act made by the A.O. The Ld. Counsel for the assessee vehemently submitted that during the assessment proceedings the assessee could not file the copy of the TDS challans. However, during the appellate proceedings before the CIT(A), the assessee had filed entire copy of the TDS challan, but the Ld.CIT(A) has ignored the same while confirming the disallowance u/s 40(a) (ia) of the Act. The Ld. Counsel for the assessee drawn our attention to page No. 91 to 164 of the paper book wherein the copy of the challans along with TDS deducted and deposited have been produced. The Ld. Counsel further submitted that, the said addition sustained by the CIT(a) is erroneous and contrary to the material on record. On the other hand, the Ld. DR submitted that if the matter is restored to the file of A.O. for verifying the challans along with the TDS

deducted and deposited by the assessee either the parties will not be prejudiced.

6. We have heard the parties and perused the material available on record. The assessee has produced the challan along with TDS deducted and deposited in the paper book at Page No. 91 to 164, it is also found that the Ld.CIT(A) has not verified those documents on the contrary the Ld.CIT(A) erroneously observed that “*the assessee has failed to furnish all the challans*” without even verifying the challans produced by the assessee. Therefore, in the above facts and circumstances we deem it fit to restore the matter to the file of the A.O. for de-novo verification to verify all the challans and the details produced by the assessee and pass appropriate order in accordance with law. Ordered accordingly. Thus, the Ground No. 2 of the assessee is partly allowed for statistical purpose.

7. The Ground No. 3 is regarding disallowance of Rs. 16,27,495/- being 10% of Rs. 1,62,74,947/- claimed as maintenance of JHV Mall which was disallowed by the A.O. and the same has been upheld by the CIT(A). The Ld. counsel for the assessee submitted that the CIT(A) has erred in sustaining the disallowance ignoring the fact that Rs.10,61,415/- for building maintenance has been incurred during the year under consideration in the books of accounts of JHV mall and Multiplex, remaining Rs. 1,52,13,531/- related to Ramada Plaza Hotel, however, the repair and maintenance of building related to JHV Mall and Multiplex amount of Rs.10,61,415/-has been incurred against

the CAM charges received amounting to Rs.1,36,73,547/-. Thus, the disallowance of building repair treating the same against the rental income is highly unjustified. The Ld. Counsel also submitted that in the subsequent year i.e. Assessment Year 2018-19 the same issue arose for consideration before the A.O. and after hearing in detail, no such disallowance has been made by the Department. Therefore, submitted that the addition made in the present Assessment Year deserves to be deleted.

8. The Ld. DR relied on the findings of the A.O. and the CIT(A) and submitted that the above grounds of Appeal of the assessee deserves to be dismissed.

9. We have heard both the parties and perused the material available on record. The assessee running hotel under the name and style of Ramada Plaza, JHV in the separate premises, apart from the hotel, the assessee having JHV Mall in which the assessee is running a Multiplex Theater, Food court and shops given on rent, the expenses claimed in P & L Account are business expenditure against business income of hotel business, theatre income, food court, Mirchi Restaurant etc. it is the case of the assessee that during the year the assessee earned rent from various shops of Rs.4,81,82,741/- and Rs. 1,53,28,744/- as common area maintenance charges. Common area maintenance charges is business income against various expenses for running and maintenance of Common facilities i.e., Housekeeping expenses, Repair & Maintenance Expenses, Mall Insurance, Security Expenses, Staff Salary (Mall

Operation), electricity charges for common area etc not area given on rent, accordingly the same is part of business income and expenses over & above incurred by the assessee is allowable as business expenditure. It is further submitted that hotel JHV Ramada and JHV Mall both are running in separate premises.

10. The dispute before the A.O. regarding building repair and maintenance expenses against rental income. The assessee had provided details of building repair and maintenance unit wise and corresponding business income as under:-

<b>Particulars</b>	<b>JHV Mall &amp; Multiplex</b>	<b>Ramada Plaza (Hotel)</b>
<b>Building Repair and maintenance Expense</b>	<b>10,61,415/-</b>	<b>1,52,13,531/-</b>
<i>A. Revenue from Shop Rent.</i>	4,33,71,916/-	48,10,825/-
<i>B. Revenue from CAM Charges</i>	1,36,73,547/-	16,55,197/-
<i>C. Revenue from Food court</i>	47,19,642/-	
<i>D. Revenue from Homemaker (Retail shop)</i>	5,69,38,597/-	
<i>E. Theater Income</i>	6,03,55,160/-	
<i>F. Sale of Food and Beverage</i>	2,16,87,542/-	7,38,53,902/-
<i>G. Others Sales</i>	44,88,729/-	60,40,406/-
<i>H. Hotel Room Sales</i>		16,73,44,813/-
<b>1. Total Revenue (A to H above)</b>	<b>20,52,35,133/-</b>	<b>25,37,05,143/-</b>

11. From the above chart it depicts that only Rs.10,61,415/- for building maintenance has been incurred during the year under consideration in the books of account of JHV Mall and multiplex and remaining Rs. 1,52,13,531/- related to Ramada Plaza Hotel. It is the case of the assessee that the repair and maintenance of building related to JHV Mall and Multiplex amounting to Rs. 10,61,415/- has been incurred against the CAM charges received amounting to Rs.1,36,73,547/-. Thus, the CIT(A) has committed an error in making proportionate disallowance of building repairs treating the same against the rental income. It is found that the similar issue has also arose for consideration before the A.O. for the Assessment Year 2018-19, in the draft assessment order placed in the paper book Page No. 85 to 88, the similar issue has been considered by the A.O. but in the final Assessment Order for the Assessment Year 2018-19 placed on paper book 89 to 90 no such disallowance has been made. Considering the above facts and circumstances, we find merit in the argument of the Ld. AR regarding Ground No. 3 and we deem it fit to allow the ground No.3. Accordingly, Ground No. 3 of the assessee is allowed and the disallowance of Rs.16,27,495/- made by the A.O. which was sustained by the CIT(A) is hereby deleted.

12. In the result, the Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court 17th May, 2023

Sd/-

Sd/

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated: 17/05/2023  
*Pk/R.N, Sr. sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI