

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 5471/Del/2019, A.Y. 2011-12

| | | |
|---|-----|--|
| M/s. Unison Hotels Ltd. Plot No. 2, Nelson Mandela Road, Vasant Kung Phase II, New Delhi-110070 PAN : AAACU0455C | Vs. | Additional Commissioner of Income Tax, Range-18, New Delhi |
| Appellant | | Respondent |

| | |
|---------------|---|
| Appellant by | Sh. Vinod Kumar Bindal, CA & Ms. Rinky Sharma, ITP |
| Respondent by | Sh. Ajay Kumar Arora, Sr. DR |

| | |
|------------------------|------------|
| Date of hearing: | 24.04.2023 |
| Date of Pronouncement: | 14.06.2023 |

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 08/03/2019 of CIT(A)-43, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 493/2014-15 arising out of an appeal before it against the order dated 29.03.2014 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Range-18, New Delhi (hereinafter referred as the Ld. AO).

2. At the outset it is observed that the appeal has been filed with the delay of 18 days for which assessee has given an explanation that due to some personal

reasons of his father's ill health he had gone to Nepal due to which this delay of 18 days. The delay is not inordinate and there is sufficient justification in the form of affidavit, accordingly delay is condoned.

3. The assessee filed return of income declaring total income of Rs. 6,92,42,040/- which was taken up for scrutiny and apart from other disallowances, the Ld. AO had made disallowance which were sustained by Ld. CIT(A) and before this Tribunal assessee has raised following grounds :-

"1. That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the addition of Rs. 12,55,138/- on account of difference in amount of income offered by assessee and entries mentioned in ITS statement without appreciating the facts of the case and documentary evidences placed on record.

2. That on facts and circumstances of the case, the Ld. CIT(A) was not justified in partly upholding the disallowance of interest of Rs. 71,36,000/- against interest free loans given to subsidiary companies without appreciating the facts that money was given out of internal accruals and no disallowance is required to be made.

And the third ground of disallowance u/s 14A was not pressed.

4. Heard and perused the record. The ground wise determination of issues is as follows;

5. **Ground no 1;** The assessee company is running a Five Star Deluxe Hotel in the name of 'The Grand' located at Plot No. 2, Nelson Mandela Marg, Vasant Kunj, Phase -III, New Delhi. During the relevant previous year the assessee company has shown income from Rooms, Food, Beverage & Others services to the tune of Rs.81,35,90,931/- Insurance claim of Rs.50,00,000/- and other income of Rs. 46,59,559/-. Against the aforesaid income the assessee company has claimed expenditure of Rs.46,09,48,680/-, interest and finance charges of Rs. 24,37,66,219/-. Profit before tax has been computed at Rs.6,01,94,422/-. While dealing with the question of Income not shown related to the TDS

deducted by various parties it was noted that there is total undisclosed TDS of Rs. 487364.94/-. The assessee on 18.03.2014 was asked to reconcile the undisclosed TDS and was show caused why not the income relevant to undisclosed TDS be not added to its total income.

5.1. The assessee on 25.03.2014 submitted the details wherein the income relevant to undisclosed TDS has not been included in its total income. Further, the assessee on 28.03.2014 submitted reconciliation in respect of following parties.

1. Ethiopian Airlines
2. HT Media Ltd.
3. HVM Associates (P). Ltd.
4. Tetra Information Service (P). Ltd.
5. Kotak Mahindra Bank Ltd.
6. Huawei Telecommunication (India) Company (P). Ltd.

5.2. Ld. AO observed that the reconciliation for sl. no. 6 does not reconcile with the ITS Statement. Further, Ld. AO observed that no reconciliation was submitted for the following parties which were added to the total income of the assessee.

1. REVO Content Services (P). Ltd.
2. Red Fort Capital Advisors (P). Ltd.

6. Ld. CIT(A) has dealt with issues in para no. 4.5, 4.5.1 & 4.5.2 and on behalf of the assessee it is submitted that as far as the confirmation of addition of Rs. 12,55,138/- for disallowance in income as per Form 26AS and ITS for **REVO Content Services (P) Ltd.** is concerned an affidavit was filed before Ld. CIT(A) of 16.01.2017 along with written submission dated 16.01.2017

mentioning that the company had no transaction with REVO Content Services (P) Ltd. having TAN DELR 16772A during the year ended 31.03.2011, the copy of which is made available at page no. 126-127 of the paper book. It was submitted that without any verification by the Tax Authorities the addition was made and sustained.

6.1 In regard to addition in respect of *Huawei Teloecommunication (India) Pvt. Ltd.* it is submitted that the amounts which were received from the said party have been disclosed in the statement of account of the said party made available at page no. 66 of the paper book where the amount of Rs. 6,09,083/- is mentioned by way of debit entry for banquet charges on 29.07.2010. It is submitted that it was banquet charges but company deducted TDS as per rent and shown same in Form 16A. The copy of same is made available at page no. 68 of the paper book. It is submitted that in Form 26AS made available on paper book from page 38 to 66 at page no. 60 the bank charges of Rs. 6,09,083/- are mentioned along with tax deducted by the concerned party of Rs. 16,500/-. Ld. DR however supported the findings of Ld. Tax Authorities.

7. Appreciating aforesaid it can be observed that the Ld. CIT(A) while giving finding in para no. 4.5, 4.5.1 has not taken into consideration the aforesaid affidavit as with regard to *REVO Content Services (P) Ltd.* The Bench is of considered opinion that when a fact is denied specifically on affidavit before any quasi judicial authority, specially Tax authorities who have powers of enquiry too, then without any attempt to discredit the depositions made in affidavit on basis of some facts or evidence the claim should be belived. Specially when an assessee is telling on oath that it has no concern with a particular party then that should be enquired into and which is missing in the orders of Ld. Tax authorities here. Addition on that account is not sustainable.

8. Then the case of assessee is that the amount of Rs. 6,93,767/- shown credited from ***Huawei Telecommunication (India) Company (P) Ltd.*** is wrong entry on the part of the concerned deductor. The nature of transaction was of Rs. 6,09,083/- only. The Bench is of considered opinion that once assessee does not deny its transaction with ***Huawei Telecommunication (India) Company (P) Ltd.*** then in the absence of any confirmation being filed from the said company that the amount involved was only 6,09,083/- and not 6,93,767/- the assessee can only benefit to the extent that addition can be restricted to Rs. 84,684/- (6,93,767- 6,09,083) but that will entitle assessee to full credit of Rs. 52,881/- against Rs. 16,500/-. Accordingly, the issue is allowed to the benefit of assessee however, Ld. AO will re-compute the disallowance and credit as per aforesaid observations.

9. **Ground no. 2.** It can be appreciated that Ld. CIT(A) while dealing with the issue of disallowance of Rs. 71,36,000 out of interest paid on loan on estimate basis it was observed in para 4.6 & 4.6.1 as follows :

“4.6 Ground No. 8 is related to disallowance of Rs. 71,36,000 out of on loan on estimate basis for which interest free advances were given by the assessee to its subsidiary companies. The first amount referred to is an amount of Rs. 3.4 Crores advanced to M/s Unison Hotels South (P) Ltd. The appellant has stated that it has interest free funds of Rs. 389 Cr. and interest bearing funds of Rs. 227.05 Crs. In this context, the amount of advance of Rs. 3.4 crores should be presumed, to be out of interest free funds. Without prejudice to the aforesaid submission, the appellant has also submitted that the rate of disallowance of interest @ 16% is totally incorporated. The submission of the appellant has been examined. It is seen that the rate of interest of loans taken by tire appellant vary from 12.5% to 11%. As a result, the disallowance to an extent of 16% was not appropriate. Accepting the alternate submission of the assessee, it is clearly logical to disallow the interest corresponding to advance of 3.4 Crores @ 11.5%. The second advance is of Rs.

31 lacs given to M/s RAV Dravya (P) Ltd. It has been submitted by the appellant that interest @ 9% was actually recovered from the said party. Therefore it is not an interest free advance and no addition should be made on this account. The argument of the appellant has been considered. It is clear that the appellant has varying interest on loan taken by it on an average rate of 11.5%. The receipt of interest in its present is advanced @ 9%. The differential rate of 2.5% on Rs. 31 lacs is therefore required to be disallowed and added back.

4.6.1 The third loan advanced was Rs. 75 lacs given to M/s Vedic Hotels Pvt. Ltd. The appellant has submitted that the entry in the books related to M/s. Vedic Hotels Pvt. Ltd was made only on 31.03.2011. As a result, the disallowance if any in respect of M/s Vedic Hotels Pvt. Ltd should be restricted to one day. The argument laid by the appellant is examined. The AO is directed to recomputed the interest corresponding to loan of Rs. 75 lacs for a period of one day subject to the condition that the party M/s Pranav Securities (P) Ltd. is also not a related party in whose case the interest free advance was already existing. The ground is partly allowed.

The appeal is disposed.”

9.1 It can be observed that the assessee has claimed that it has sufficient interest free funds of Rs. 38,495/- crores and business assets worth Rs. 611.37 crores while the interest free advances were 5.44 crores. Thus, the free funds were more than sufficient to make investment and give interest free advances. Considering the admitted states of affairs appearing on record there appears to be no dispute to the fact that assessee's total reserves and funds far exceeded the interest free advances. At page no. 70 of the paper book bifurcation of the funds available with the company and assets held as on 31.03.2011 has been provided which support the contentions of Ld. AR that there is a presumption that interest free funds are used when available to give interest free advances for non-business purposes. Reliance for which can be placed on the Mumbai High Court judgement in *CIT vs. Reliance Utility and Power ltd. (2009) 313 ITR*

340 apart from other judgment cited by Ld. AR. Thus, the Bench is inclined to decide this ground in favour of assessee.

Consequently, the appeal is allowed partly.

Order pronounced in the open court on 14th June, 2023.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:- 14 .06.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI