

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, DELHI**

**BEFORE SHRI ANIL CHATURVEDI, AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 4613/Del/2019
Assessment Year: 2015-16)

**M/s Coronet Hotel
Services & Suppliers
Pvt. Ltd.** C-8/1A, Vasant
Vihar, New Delhi-110057. **Vs.** **DCIT Circle-6(2),**
Central Revenue Building,
New Delhi-110002.

PAN No. AAACC3164A
Appellant)

: Respondent)

Appellant by : Shri R.S. Singhvi, Ld. CA &
Sh. Satyajeet Goel, Ld. CA

Respondent by : Shri Shankar Lal Verma,
Sr.DR

Date of Hearing : 29.03.2023

**Date of
Pronouncement** : 20.06.2023

O R D E R

Per N. K. Choudhry, Judicial Member:

The Assessee/Appellant herein has preferred this appeal against the order dated 22.03.2019 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-2, New Delhi {in short 'Ld. Commissioner')} u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AY 2015-16.

2. In the instant case, the Assessee declared its income at Rs. (-) 10,17,441/- by filing its original return of income on dated 27.09.2015, wherein the revenue receipts generated from operations of "Hotel/Resort" situated at Tarudham Valley, Golf Homes, Village Dadu, Tahsil Tauru, District Mewat, Haryana was shown as "rental income". Subsequently the Assessee by revising its return of income on dated 01.06.2016 declared its income to the tune of Rs. (-) 54,52,184/- and offered the 'revenue receipts' from the operation of "Hotel" under the head "Business Income", therefore, the Assessing Officer (AO) by issuing notice 13.02.2017 under section 142(1) of the Act along with questionnaire, show-caused the Assessee to furnish the detailed reasons with justification for filing of the revised return.

2.1 In response, the Assessee vide letter dated 24.11.2017, claimed as under:

"The Assessee company has appointed an expert & experienced operating management agency M/s Four Seasons Hospitality Pvt. Ltd for carrying the business from the said premises in consideration of management license basis. The Assessee company has generated revenue on account of management licence fee Rs. 76,00,494/- which

has been offered to tax unde head "Income From House Property". With reference to terms & conditions of the aforementioned management agency agreement between the Assessee Company and Four Seasons Hospitality Pvt. Ltd, it is apparent that there is no relationship of Owner/Tenant nor is any fixed amount received or receivable by the Assessee. The Assessee receives percentage of the revenue which fluctuates from month to month and has different terms for each source of Revenue, namely Golf Course/ F&B, Rooms etc.

The Assessee since inception has disclosed the Revenue from Operations as "Business Revenue", duly accepted by the authorities in earlier years. The predecessor has after detailed scrutiny of the Agreement assessed the same as Business Income in the A.Y.2012-13. The copy of Agreement with Four Seasons was duly filed and after scrutiny assessment was framed. The principle of Consistency enunciated by the Supreme Court states that if a decision has been accepted in the earlier years, the same is to be followed unless there is material change in facts. Thus since this issue has been examined and accepted in AY 2012-13 vide order w/s 143(3), the same continues to be followed.

However the accountant of the Assessee on mistaken belief, inadvertently, filed the return of Income

reflecting the "Revenue from Operations" as Rental Income. The Assessee company has inadvertently offered such income under house property which should be considered under business & profession. Hence, the computation was revised to correctly offer such income to tax under the head 'business income.'

{Highlighted by us for clarity}

2.2 The AO further show-caused the Assessee, as to why the receipts from M/s Four Seasons Hospitality Pvt. Ltd. which has been declared as "Income from Business & Profession" in its revised return, should not be assessed under the head "Income from House Property" as per original return.

2.3 In response, the Assessee by filling its reply dated 07.12.2017 made following submissions :

"Your goodself has issued a show cause as to why receipts from four seasons hospitality pvt. ltd should not be treated as income under the head "Income from House property". In response to your show cause, we on behalf of the assessee submit as under:

a. That the main object being perused by the company is to carry out the business of hotel/resort in building developed by the Company at Tarudhan Valley Golf

Home Project, Village Dadu, Tehsil-Tauru, District - Mewat (Haryana).

- b. That the said resort was constructed and completed in AY 2007-08 and thereafter it was put to use in the said year.*
- c. That the commercial activities (Revenue from Operation) in the said Resort started from F.Y. 2006-07 (AY 2007-08)*
- d. That Assessee company in A.Y 2010-11, appointed an expert & experienced operating management agency M/s Four Seasons Hospitality Pvt. Ltd for managing the business from the said premises in consideration of management license basis. (Copy of Agreement has already been filed).*
- e. That during the A 2015-16 the assessee company has generated revenue on account of management license fees of Rs. 76,00,494/- which has been disclosed in the Audited Accounts under the head" Revenue from Operations".*
- f. That the assessee company had installed the furniture and fitting in the said resort and in AY 2007-08 the resort was put to use and the assessee company was itself operating the resort before the assessee company appointed an expert & experienced operating management agency M/s Four Seasons Hospitality Pvt. Ltd for managing the business. Thus all the necessary amenities together with the building was already in place at the resort at the time of appointment of the*

management agency M/s Four Seasons Hospitality Pvt. Ltd.

- g. That the Assessee since inception has disclosed the Revenue from Operations as "Business Revenue", duly accepted by the authorities in earlier years. The predecessor has after detailed scrutiny of the Agreement assessed the same as Business in AY 2012-13. The copy of Agreement with Four Seasons was duly filed and after scrutiny assessment was framed.
- h. The relevant clauses of the Agreement are reproduced hereunder :-
- i. Thus on a perusal of the aforesaid terms & conditions, it is apparent that there is no relationship of Owner/Tenant nor is any fixed amount received or receivable by the Assessee. The Assessee receives %age of the Revenue which fluctuates from month to month and has different terms for each source of Revenue, namely Golf Course/ F&B, Rooms etc. The Assessee has placed reliance on the following judgments.....
- j. We would also like to submit that assuming but not admitting that income is Rental, even then the same is to be assessed as Business Income based on principles laid down by Supreme Court. The Assessee had been operating the Resort itself since AY 2007-08 and thereafter gave a management contract to Four Seasons, which is being interpreted to mean a Rental Agreement. We object to the said Interpretation but even then in view the judgments cited the same would still constitute Business Income.....

k. Further the courts have had occasion to examine whether Rental income is assessable as Income From Business OR Property. The Assessee placed reliance on the following judgments...”

2.4 The AO though considered the submissions of the Assessee referred to above, however, did not find the same as tenable and by examining the agreement dated 01.07.2009 entered into between the Assessee and M/s Four Seasons Hospitality Pvt. Ltd. (In short 'Four Seasons'), concluded as under:

“3.8 In the instant case, it is undisputed that the accounting for daily collections made from the guests and also the day to day expenses on running the hotel are not being done not by the Assessee buy by M/s Four Seasons Hospitality Pvt. Ltd. (hereinafter referred to as Seasons) This is evident from Para 5 (Page 6) of the agreement which states that the business will be carried out by Seasons. Further at point (a) on page 7 - it has been specified that Seasons shall provide complete accounts of the revenue generated to the Assessee. Clause 3 (page 5) of the agreement deals with the duration of the agreement. The agreement starts off with an initial period of 2 years to be extended by a further period of 4 years. It further specifies that in case it is not renewed for the further period of 4 year, the Assessee shall enter into a Management Agreement with Seasons for a minimum of 9 years. The agreement between the parties is thus for considerably long period and clearly reveals that the Assessee did not have any intention to run the business itself. It is also noted that the employees have been

employed by Seasons and report to Seasons and this has admitted by the Assessee in its letter dated 14.12.2017 in response to a specific query raised by this office.

3.9 As per Point 9 of the agreement, Seasons is required to invest between Rs. 100-150 lakhs towards capital & pre-opening expenses (capital cost). This clearly reveals that the Assessee did not even have the full hotel in operation when it entered into the Agreement and required a party to complete the hotel as well as resort. This is corroborated by the Assessee's submission dated 14.12.2017 where it has been stated as under: -

"We are attaching the balance sheet of FY 2008-09 Indicating that a part of the resort (Emphasis supplied) disclosed as Capital Work in Progress has been capitalized and put to use during the said financial year"

The fact that a huge investment was required to be made by Seasons and it had to be charged to revenue expenses over a period of 6 (244) 11 (249) years reveals the intention of the Assessee to let out the assets for a long period. This also falsifies the Assessee's submission vide letter dated 07.12.2017 that all the necessary amenities together with the building was already in place at the resort at the time of appointment of Seasons.

3.10 As per Point 12 B 1. (Page 12) of the agreement, the VAT registration, Liquor License, Health License. Police permission, [smoking, music), requisite permission under PFA Act, Fire NOC, and all other licenses, statutory permissions, registration and approvals required for carrying out the Business are to be obtained by Seasons

at its own cost and in its own name. This has been reiterated at Point 13 (Page 14) of the agreement where it has been further specified that in case of transfer of licenses being permissible, such license shall be transferred by Coronet to Seasons.

3.11 Further as per Point 12 B 4. (Page 12) of the agreement, Seasons is required to fully indemnify Coronet against all damages, risks, losses, penalties, fines etc. arising out of the Business or from its own conduct or from the conduct of its employees or third parties during the subsistence of the Agreement. As per Point 12 B 6. Seasons is responsible and liable for observing all rules and regulations for all the workers/ employees engaged by it for carrying out the Business including contract workers/employees.

3.12 As per Point 14 (Page 14) of the agreement, all the taxes and levies related to running and operating of the Business including but not limited to VAT, luxury tax, service tax, excise, etc. (only for the hotel, conference and F&B) shall be the responsibility of Seasons and Coronet shall not be pay or liable for the same.

3.13 The various clauses of the agreement (as discussed above) clearly reveals that the entire hotel with all machinery, fixtures & furnishings have been handed over to Seasons and it is Seasons which is running the entire business in its own name, obtaining all the clearances & licenses in its own name & paying all the taxes. It is not the case that only a part of the hotel business has been given to Seasons for being run.

3.14 In the instant case, as per Clause 5.1, the Assessee is receiving a percentage of the net revenue generated from the business. But that cannot be the sole deciding factor to conclude that the amount received by the Assessee is rental income or business income. The percentage of the net revenue payable to the Assessee is only a basis/formula for calculation of rent.

3.15 It is a well settled proposition of law that the substance will prevail over the form. In the instant case, as discussed above, it is clear that intention of the Assessee was to let out the property and it cannot be considered that the Assessee was exploiting the property for its commercial business purposes. **The management license fees of Rs. 76,00,494/- will thus be assessed under the head 'Income from House Property' as declared by the Assessee in the original return.** I am satisfied that the Assessee has furnished inaccurate particulars of income and hence, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are initiated on this point.”

2.5 The AO, consequently assessed the management license fees of Rs. 67,00,494/- as income under the head “House Property” as declared by the Assessee in the original return of income and also disallowed an amount of Rs. 28,51,200/- paid to the Director, being not incurred for the purpose of the business and consequently added in the income of the Assessee and also made other additions .

3. The Assessee being aggrieved against the treatment of revenue of Rs. 67,00,494/- from operation of Hotel as "Income from House Property" instead of "Income from Business" and consequently disallowing the deduction of Business Expenses amounting to Rs. 53,84,457/- and depreciation amounting to Rs. **51,36,730/-** on account of set off of the unabsorbed depreciation carry forward from earlier years, preferred first appeal before the Ld. Commissioner.

4. The Ld. Commissioner by relying upon the judgments passed by the Hon'ble Apex Court in the cases of Sultan Brothers Pvt. Ltd. (1964) 51 ITR 353 (SC) and Shambhu Investment (P) Ltd. Vs. CIT (2003) 263 ITR 143, affirmed the action of the AO by treating the revenue receipts from operation of Hotel as "Income from House Property" by observing as under:

- *The appellant is the owner of a hotel resort and was running the hotel business till 2009. The appellant had been running in loss. After that, the appellant entered into an agreement for management license fee with a third party - Four Seasons Hospitality to run the hotel and pay license fee to the appellant at a fixed percentage of net business revenue. The appellant has rented entire hotel along with furniture and fixtures to the third party. No business is, henceforth, carried on by the appellant itself.*

- *In AY 2012-13, the appellant disclosed the income from license fee as business income which was accepted by the AO. The assessment order has been enclosed.*
- *In AY 2013-14, the assessing officer discussed the case in detail and found that the appellant was not carrying on any business. It was only sharing the revenue earned by the business carried on by the third party Four Seasons Hospitality. The appellant had declared this license fee as rental income in the original return. Later on, during assessment proceedings, it filed a revised computation of income showing income from business instead of rental income. The same was rejected and income was assessed as rental income.*
- *In AY 2013-14, it was found out by the AO that the appellant was registered with Service tax department for renting of immovable properties and in the service tax return the appellant has shown its income from renting activities.*
- *In AY 2013 - 14, the CIT (A) upheld the treatment of income as rental income. The matter is pending for decision with ITAT.*
- *In AY 2014-15, there was no scrutiny assessment.*
- *In AY 2015-16, the appellant declared this license fee as rental income in the original return filed on 27/9/2015. Later on, it revised the return on*

1/6/2016 and showed this income as income from business.

- In the assessment order AY 2015-16, the AO has discussed the agreement for management license fee in detail. He has given clear findings that all hotel business is carried on by the third-party which has shown it as business income. The appellant has not carried out any business operation nor has it incurred any expenditure on the business. The agreement is for a very long period subject to renewal and further extension.*
- There is one single agreement to let out the hotel building along with furniture and equipments which are inseparable parts of the building.*
- The license fee paid by the third-party is shown as rentals and TDS under section 194 I has been deducted.*

6.2 It is quite misleading to say that the appellant was running the business itself which is not borne out from the facts. Merely, claim of expenses in accounts does not prove that the appellant has carried on the hotel business. It is also not correct to say that the appellant company was incorporated with an objective of renting out their property for business. In earlier years till 2009, the appellant had been running the hotel. It was running in loss. After 2009, the third party has made the agreement and taken over the entire business in lieu of license fee paid to the appellant.

6.3 The original return was filed on 27/9/2015. Later on, it was revised on 1/6/2016 and showing this rental income as income from business. This clearly shows that the appellant did not have the audited accounts under section 44 AB at the time of filing original return and it had not claimed the income from business.”

4.1 The Ld. Commissioner with regard to the issue not allowing the set off of the unabsorbed depreciation of Rs. 51,36,730/- being carry forward from earlier years, remanded the same to the AO for examination under eligible unabsorbed claims brought forward from earlier years, when the business has actually been carried out by the Assessee and the same can be allowed as per law.

5. The Assessee being aggrieved against the upholding of the addition *qua* revenue from House Property and not allowing the claim of setting off of brought forward unabsorbed depreciation of earlier years, filed the present appeal before the Tribunal.

6. The Ld. Authorized Representative (AR) Mr. R.S. Singhvi, Ld. CA at the outset claimed that the Assessee's Accountant in the original return of income filed, on mistaken belief inadvertently shown the revenue from

operations of Hotel as "rental income" which was later on shown as income from "Business" by revising its return of income and therefore cannot be taken a base for treatment of the revenue as rental income from house property, without determining the real status of income. The Assessee in response to the show-cause notice dated 01.12.2017 issued by the AO clearly replied that the main object being perused by the Company is to carry out the business of Hotel/Resort in building developed by the Company at Taradham Valley, Golf Homes, Village Dadu Tahsil, Taura, District Mewat, Haryana, which was constructed and completed in FY. 2006-07 and thereafter was put to use for commercial activities from FY 2006-07 (AY 2007-08) onwards itself.

6.1 Subsequently the Assessee in AY 2010-11 appointed an experienced and operating management Agency M/s Four Seasons being expert for managing the business from the said premises on a consideration of management license basis and during the AY 2015-16 under consideration, generated revenue of Rs. 76,00,494/- as management license fees, which though was shown in the original return of income as rental income, however, in the revised return of income, has been shown as "Income from Business".

6.2 Before appointing, an expert agency M/s Four Seasons for managing the business, the Assessee had installed all the furniture and fittings in the resort in AY 2007-08 itself, thus, all the necessary amenities together with building were already in place at the Hotel/Resort at the time of appointment of M/s Four Seasons and since inception of the resort, the Assessee has disclosed the revenue from operations as "Business Revenue" which has duly been accepted by the authorities for the earlier years and even otherwise in the AY 2012-13, a detailed scrutiny of the assessment was done and the revenue from operation of business has been assessed as "income from Business" but not as "income from House Property". The Assessee further claimed that there is no fixed amount for giving the building/resort to M/s Four Seasons and the management license fees fluctuates according to the revenue generated from the business, therefore, at any circumstances, the receiving of revenue from M/s Seasons cannot be construed as "Rental income from House Property". But still both the authorities below treated the said revenue as rental income from House Property. In support of its case, the Ld. AR also relied upon the judgments passed by the Hon'ble Apex Court and the Jurisdictional High Court in the cases of Commissioner of Income Tax Vs. Plaza Hotels (P) Ltd. (2019) 107 taxmann.com 288 (SC) and Commissioner of

Income Tax Vs. Francis Wacziarg (2011) 16 taxmann.com 78 (Delhi) and CIT Vs. Excel Industries Ltd. and Ors 358 ITR 295.

7. On the contrary, the Ld. Departmental Representative (DR) Mr. Shankar Lal Verma claimed that both the authorities below have extensively dealt with the peculiar facts and circumstances of the case and it is admitted fact that the Assessee itself has deducted the TDS under section 194 (1) of the Act which deals with the rental income and thus goes to show that the Assessee has earned rental income from House Property and therefore, no interference is warranted in the decision of the authorities below in treating the revenue receipts as 'rental income from house property'.

8. We have heard the parties and perused the material available on record. The main issue in the instant appeal relates to the treatment of "revenue receipts" by the Assessee from operation of Resort/Hotel by M/s Four Seasons, as business income.

8.1 The Assessee claimed that it has constructed and started a resort for commercial activities at Tarudham Valley, Golf Homes, Village Dadu, Tahsil Tauru, District

Mewat, Haryana in the AY 2007-08. Subsequently, the Assessee in the AY 2010-11 appointed M/s Four Seasons as an expert being experienced operating Management Agency for managing the business from the said premises in consideration of management license basis. As per agreement dated 01.07.2009 executed between the Assessee and M/s Four Seasons, the duration of the term of agreement was initially for two years commencing from the effective date with option for renewal of the same for four years. Further consideration which M/s Four Seasons for carrying out the business from Hotel premises, was supposed to pay to the Assessee, has been set forth as under:

1st Year : 10% of the net revenue generated from the business.

2nd Year : 15% of the net revenue generated from the business.

3rd Year : till six year 20% of the net revenue generated from business

8.2 The Assessee as per agreement was also entitled to receive Rs. 50 per room from Four seasons, on uses basis for using the club facility of health club, gym and sports area but excluding the Spa.

8.3 From the agreement, it also appears that the Assessee was not supposed to get any fixed amount but infact sharing the revenue on fluctuation basis and therefore question emerge as to whether the Assessee earned income from "Business" or rental income from "House property"

8.4 The Hon'ble Apex Court in the case of Chennai Properties and Investments Ltd. Vs. CIT (2015) 56 taxmann.com 456 (SC) and Rayala Corporation Pvt. Ltd. Vs. ACIT (2016) 72 taxmann.com 149 (SC) clearly held that if Assessee is having House Property and by way of business, it is giving the property on rent and receiving rent from the said property as its business, the said income even if in the nature of the rent, should be treated as "Business Income".

8.5 The Hon'ble Apex Court in the case of Raj Dadarkar & Associates Vs. ACIT CC-46 (2017) 81 taxmann.com 139 (SC) also came across with the identical situation as involved in the instant case and laid down the following test for determining the real nature of income "as to whether the income would be chargeable under the head Income from House Property or it would be chargeable under the head Income from Profits & Gains from Business or Profession", by holding as under:

That in the first instance merely because there is an entry in the objects clause of the Business of a particular as nature, would not be determinative fact to arrive at a conclusion that income is to be treated as Income from Business a such a determination would depend upon circumstances of each case and the matter has to be examined on the facts of each case. Hence, coming to the instant case, we have to examine the object of the Assessee company.

- II. *The Intention of making the lease.*
- III. *Consideration involved,*

8.6 In order to understand intention of the Assessee for making agreement for operation of hotel by Four Seasons and consideration involved, we have to see the main objects of the assessee, which reads as under:

“To carry on the business of merchants, suppliers, importers, exporters, hirers, lessors, lessees, consultants and manufacturers of materials, provisions required by hotels, motels, boarding and lodging houses, hospitals, nursing homes, restaurants, canteens, guest houses, including but not limited to human resources, carpets, crockery and cutlery, linen, soap, furniture, motor vehicles, kitchen equipment, Utensils, laundry chemicals and equipments, air conditioning plants, medicines, X-ray and other hospital equipments, food and beverages supplies (raw and cooked) printing and packaging, bottling, and other engineering and operating stores and other capital goods as required by these institutions.

To promote, establish, operate, manage, administer, own,. take on lease, licence and/or on franchise, and/or to give on lease, licence and/or on franchise, and to carry on the business of, hotel, resort, restaurant, conference center, motel, holiday camp, leisure

center, caravan site, café, tavern, beer house, boarding and lodging house keepers, serviced apartments, clubs, baths; dressing room, laundries, reading, writing and newspaper rooms, libraries, grounds and places of amusements and recreation, sport, entertainment, health spas, health clubs and health centers, yoga centers, massage parlours, beauty parlours, beauty saloons, gymnasiums, swimming pools, physiotherapy centers for body and beauty care in India or in any other part of the world and to do all acts and things, Including but not limited to acquisition by purchase, lease, exchange, hire, or otherwise any land and/or property and/or building for any tenure or any interest therein and to erect, construct and/or develop, or cause such erection, construction and/or development of, buildings, complexes or works of every description on the said land to carry on the abovesaid business of the Company.”

8.7 From the objects of the Assessee, it is clear that the main purpose for establishing the Assessee's company is not for "renting business" but infact is for various types of businesses. Further, it is a fact that the Assessee since 2007-08 was running commercial activities from the hotel premises and on dated 01.07.2009 relevant for A.Y. 2010-11 entered into an agreement with M/s Four Seasons for running the Resort/Hotel on revenue sharing basis which fluctuates according to the sale from Business. May be the Assessee has given possession of the premises along with the fixtures and fittings but it is a fact that Assessee is also subjected to future eventualities/fluctuation of the revenue generation and therefore, directly/indirectly involved with business carried out by the M/s Four Seasons from the resort/hotel premises .

8.8 The Hon'ble High Court of Delhi in the case of Commissioner of Income Tax-IV Vs Francis Wacziarg (supra) also came across with the identical issue and affirmed the view of Ld. Commissioner to the effect that where the Assessee running hotel business in his property and had given operation and management of hotel to a company and entered into "revenue sharing agreement" with that company in terms of which, it was entitled to 20% of gross operating profit, such share of property would be assessed as "Business Income".

8.9 The Hon'ble High Court of Mumbai in the case of Raja Hotels Pvt. Ltd. (2019) 107 taxmann.com 287 (Bom) also came across with a identical issue/situation wherein the Assessee was not receiving any rent amount, but was receiving 1% of the total revenue earned by the company to whom the hotel was given for commercial exploitations and the Assessee did not get any fixed amount as rent. The Hon'ble High Court approved the view of the Tribunal in treating the income from 1% of the revenue earned by the by the Assessee from hotel operator, as "Business Income" but not the rental income from "House Property".

8.10 The Ld. Commissioner in sustaining the action of the AO in treating the revenue receipts from the revenue

generated by Four Seasons as rental income under the head "Income from House Property" also relied upon the judgment of the Hon'ble Apex Court in the case of Sultan (supra). In Sultan's case, the Hon'ble Apex Court also clarified that object clause would not be the determinative factor to conclude "whether the income is to be treated" as "Income from House Property". Such a determination would depend upon circumstances of each case, whether particular business is letting or not.

8.11 In our considered view, no doubt, object clause is not a determinative factor, however, it cannot be sidelined completely but should be given weightage in interpreting the main activities of an Assessee. It is an admitted fact that the accounts of the Assessee are audited and Notes No.1 (II) of the Audit report, specifies the revenue recognition as under:

*"Revenue comprises from sales, food and beverages and allied services relating to hotel operations including other general charges received from hotel services.
Revenue is recognized on rendering of services.
Expenses are accounted for on accrual basis."*

8.12 It is not in controversy in this case that in the year under consideration, the Assessee has received 20% of the net revenue generated from the business carried out by M/s

Four Seasons and neither there is any relationship of owner/tenant nor any fixed amount received as "rent" by the Assessee. The Assessee received percentage of the revenue which fluctuates from month to month and has different heads/source of revenue including Golf Course, Food & Beverages, and Rooms etc. Further as per agreement, M/s Four Seasons was involved in day to day management of business affairs of the Hotel. In case M/s Four Seasons had generated "NIL" revenue then the Assessee also would have not entitled to get any amount whatsoever. Rent is depend upon the use of property rented, whereas "revenue sharing" is linked to business and therefore, the agreement for rent and business distinguish each other. It is a fact that Assessee company was incorporated with the main object to carry on the business on running hotel and allied activities and therefore, purchased the land and constructed a Resort/Hotel including Conference centre and Club House, etc. and after obtaining requisite sanctions/licenses from Govt. Authorities started operating and managing the hotel by itself from A.Y. 2007-08 onwards and continued upto A.Y. 2009-10 and during those periods offered its revenue from operations of the hotel as "Business Income" which was duly accepted by the revenue/department except in AY 2013-14, in which year also the Hon'ble Tribunal vide its order dated 11-08-2022

passed in ITA no. 7418/Del/2018 remitted the identical issue qua revenue receipt claimed as business income, as involved in this case to the file of the AO and directed to consider the revised claim of the Assessee in accordance with law.

As the Assessee was running into losses and therefore made a contract with M/s Four Seasons w.e.f. 01.07.2009 for running the business of Hotel on revenue sharing basis. Even otherwise, if we consider that the Assessee has let out Hotel to M/s Four Seasons, then also the same would amount to the systematic business activities as held by the Hon'ble Apex court in Chennai Properties (supra).

8.13 Coming to the objection raised by the authorities below to the revised return filed by the Assessee on the ground that the Assessee itself has shown the Income from House Property as 'rental income'. We observe that simply if the Assessee has made any incorrect claim, which is not in accordance with law that cannot be made a base for making an addition /taxing the Assessee. The very purpose of income tax proceedings, is to correctly assess the tax liability of Assessee in accordance with law but not taking the refuge of mistake committed by the Assessee , which in

this case even otherwise rectified by filing revised return of income.

8.14 Article 265 of the Constitution of India clearly prescribes that no tax shall be levied or collected except by the authorities of law. The Hon'ble Allahabad High Court in the case of P.T. Sheonath Prasad Sharma Vs. CIT 66 ITR page 647 (Alld.) reminded that Income Tax Officer is empowered to assess the income of the Assessee and determine the tax payable therein in accordance with law but not otherwise. The Hon'ble High Court further reminded that just because the Assessee has shown the receipt as income in his return, it does not make him liable to tax thereon, upon a receipt which is not taxable in law, it is also open to the Assessee to take the case in appeal or revision thereafter. Further, the Assessee is within his right in requiring the Appellate or Revisional Authorities to examine the validity of assessment of tax on receipt, which is admitted by him but not taxable in law.

8.15 The Hon'ble Apex Court in the case of DIT Vs. Purnamal & Sons 96 ITR 390 (SC) also clearly held that a person cannot be taxed on the principle of estoppels.

8.16 From the judgments referred to above, it is clear that the purpose of assessment proceedings before the taxing authority is to assess correctly the tax liability of Assessee in accordance with law. No tax can be levied on the principle of estoppels. Just because the Assessee has shown the receipt/income in wrong head it does not make him liable to tax thereon. If the Assessee has shown a receipt under the wrong head, it is always open to the Assessee to take the case in appeal or in revision and thereafter within his right in requiring the appellate or revisional authority to examine the validity of assessment of tax on receipt, which cannot be taxed in a particular head but admitted taxable mistakenly or inadvertently under wrong head of income, which is at all not applicable.

8.17 On the aforesaid analyzations, we are of the considered view that simply because the Assessee in original return of income has inadvertently or mistakenly or on wrong advice treated/shown the revenue receipt/income under wrong 'head of income', it can not be considered as estoppels and/or foundation for treating the income of the Assessee /making the addition.

8.18 In overall consideration, we again reiterate that in the agreement executed by Assessee with M/s Four

Seasons, not a single term or condition reflects the essence of rent agreement. The Assessee had received the receipts/income from the revenue generated by M/s Four Seasons on fluctuation basis and undisputedly has not received any fixed amount, which can be termed as "rental income", hence, we do not have any hesitation to hold that the revenue receipts generated by the Assessee from M/s Four seasons, are undoubtedly income from the Business and therefore, should be treated under the head "Business Income" but not as rental income from "House Property" as determined by the authorities below. Consequently the AO is directed to delete the addition on this issue and re-compute the liability.

9. Coming to the 2nd addition on account of not allowing the claim of set off of brought forward unabsorbed depreciation losses of earlier years.

In view of our decision in treating the receipts as income under the head "Business Income", the Assessee shall be eligible for unabsorbed depreciation as claimed for. Consequently, the AO is directed to allow the set off of the unabsorbed depreciation.

10. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 20.06.2023.

Sd/-
(Anil Chaturvedi)
Accountant Member

Sd/-
(N. K. Choudhry)
Judicial Member

SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Delhi
4. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Delhi