

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA NO. 1043/MUM/2023 : A.Y:2013-14**

Dy. Commissioner of Income Tax, Circle-3(3)(1), Mumbai.  
(Appellant)

Vs. Sarovar Hotels Private Limited  
42 Mittal Chambers, Nariman  
Point, Mumbai 400 021.  
**PAN : AAACS8083L (Respondent)**

**Appellant by : Shri Paresh Deshpande**  
**Respondent by : Shri Priyank Ghia & Mrs. Drutika Jain**

**Date of Hearing : 27/06/2023**  
**Date of Pronouncement : 28/06/2023**

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The Revenue has filed this appeal challenging the order dated 31.01.2023 passed by the learned Commissioner of Income Tax (Appeals) (NFAC), Delhi (in short 'Ld. CIT(A)') and it relates to the Assessment Year 2013-14. The Revenue is aggrieved by the decision of Ld. CIT(A) in directing the Assessing Officer to allow set-off of brought forward losses of Chandigarh unit against the profits of Mumbai and Indore units, even though the assessee's grievance before him was to set-off brought forward losses against correct income of Chandigarh unit.

2. The facts relating to the case are stated in brief. The assessee-company is engaged in the business of developing, operation and management of hotels across the country. The assessee had three 'specified business' referred to in Section 35AD of the Act, viz. hotels situated in Chandigarh, Mumbai and Indore. During the year under consideration, the assessee had brought forward losses in Chandigarh unit and the same was set-off by the Assessing Officer against the profit from Chandigarh unit to the extent of Rs.3,31,42,246/-. The assessee filed a rectification petition before the Assessing Officer submitting that the amount of Rs.3.31 crores mentioned above is the net profit shown in the books of account, while the business income computed as per the provisions of the Income Tax Act, 1961 was Rs.5.47 crores. Accordingly, it was prayed that brought forward loss should be set-off to the extent of Rs.5.47 crores and not to the extent of Rs.3.31 crores. The Assessing Officer, however, rejected the rectification petition filed by the assessee and hence, assessee filed appeal before the Ld. CIT(A).

3. In the appellate order, the Ld. CIT(A) referred to the decision rendered by the ITAT in assessee's own case in AY 2011-12 and 2012-13 in ITA No.7348/Mum/2016 and ITA No.2384/Mum/2017, both dated 20-12-2019, wherein the issue was eligibility of assessee to set-off brought forward loss pertaining to the Chandigarh unit against income shown in two other hotels located at Mumbai and Indore. The dispute arose in that year in view of the restriction prescribed in sec. 73A of the Act. As per the provisions of sec. 73A of the Act, the loss of specified business could be set off against the profits and gains from other specified business. The Tribunal held in the above said years that the brought forward loss of Chandigarh unit can be set-off against the profits and

gains from all the three specified business, viz. Chandigarh, Mumbai and Indore units. Following the said order of ITAT, the Ld. CIT(A) directed the Assessing Officer to allow set-off of brought forward loss from Chandigarh unit against the profits and gains of Chandigarh, Mumbai and Indore units. He also directed the Assessing Officer to verify the claim of assessee that the income from Chandigarh unit is Rs.5.47 crores or not. The Revenue is aggrieved by the direction so given by the Ld. CIT(A) to allow set-off of brought forward loss against the income from Mumbai and Indore units also, while the same was not the plea before Ld CIT(A).

4. The Ld. DR submitted that the appeal filed by the assessee before the Ld. CIT(A) was with regard to the adoption of correct amount of Profits and gains from Chandigarh unit for the purpose of allowing set-off of brought forward loss, i.e. the question of allowing set-off of brought forward loss of Chandigarh unit against income from Mumbai and Indore units was not before the Ld. CIT(A) at all. Accordingly, the Ld. DR submitted that the Ld. CIT(A) has passed the impugned order on a non-existent issue and hence, his order would get vitiated.

5. The Ld. AR did not controvert the factual aspects presented by the Ld. DR.

6. Having heard the rival contentions, we are of the view that there is merit in the contention of the Ld. DR. Admittedly, the Ld. CIT(A) has adjudicated an issue which was not before him and he did not adjudicate the issue which was actually contested by the assessee. Under these set of facts, the order passed by the Ld. CIT(A) would get vitiated. Accordingly, we are of the view that the appeal filed by the assessee before Ld. CIT(A) requires fresh adjudication on the grounds urged

before him. Accordingly, we set-aside the order passed by the Ld. CIT(A) and restore the appeal to his file for adjudicating the grounds urged by the assessee in the appeal filed before him afresh, after affording adequate opportunity of being heard to the assessee.

7. In the result, appeal filed by the Revenue is treated as allowed for statistical purpose.

Order pronounced in the open court on 28<sup>th</sup> June, 2023.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date : 28<sup>th</sup> June, 2023

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai