

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.778/Bang/2023
Assessment year : 2016-17

The Assistant Commissioner of Income Tax, Circle 4(1)(1), Bangalore.	Vs.	Manipal Resorts Company Pvt. Ltd., No.65, Singasandra, Off. Hosur Road, Manipal Country Road, Bangalore – 560 068. <b>PAN: AADCM 1035F</b>
APPELLANT		RESPONDENT

Appellant by	:	Shri Subramanian, S., Jt. CIT(DR)(ITAT), Bangalore.
Respondent by	:	Shri S.K. Tulsiyan, Advocate

Date of hearing	:	11.12.2023
Date of Pronouncement	:	13.12.2023

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1055178731(1) dated 17.08.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17 on the following grounds:-

- “1. The Ld. CIT(A) erred in considering the date of response of CPC to assessee against the objection raised by assessee as the date of order.

2. The Ld. CIT(A) erred in interpreting section 154(7) of the Income-tax Act, 1961 which clearly states that no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.”

2. The brief facts of the case are that the assessee filed its return of income at Rs.13,85,59,560 after claiming intra-head set off of losses of current year of Rs.2,05,58,455 and brought forward loss of Rs.5,20,42,146. In the return, the assessee had claimed the brought forward unabsorbed depreciation of RS. 5,20,42,146, which was set off against LTCG of RS. 3,46,05,287/- and income from other source of Rs. 1,74,36,319/-. While processing the return , the CPC allowed the set off against LTCG but did not allow set off of brought forward unabsorbed depreciation against income from other sources of Rs. 1,74,36,319. The assessee filed objections before the CPC on 21.03.2017 and the CPC passed the order on 04.12.2018. Thereafter, assessee filed rectification application u/s. 154 before the AO on 26.09.2022 which was rejected by the AO by observing that the rectification application u/s. 154 for AY 2016-17 is time barred.

3. Aggrieved, the assessee filed appeal before the CIT(Appeals). The CIT(Appeals) observed that the rectification application u/s. 154 filed by the assessee is within time as per section 154(7) of the Act and assessee is eligible for set off of unabsorbed depreciation from the income of the current year and allow the appeal of the assessee. Aggrieved, the revenue is in appeal before the ITAT.

4. The Id. DR submitted that the assessee did not file rectification application before the AO as per section 154(7) of the Act which is within four years from the date of intimation u/s. 143(1) of the Act. Therefore, the AO has rightly rejected the rectification application of the assessee. Accordingly, the order passed by the CIT(Appeals) should be reversed.

5. On the other hand, the Id. AR for the assessee reiterated the submissions made before the CIT(Appeals) and further stated the objection filed before CPC was on 21.03.2017 stating that “U/s 32(2) it has been clearly mentioned that Unabsorbed Depreciation becomes part of the depreciation of the succeeding Previous year”, which was disposed on 04.12.2018 by observing that “Demand outstanding is correct and collectible.” Therefore, for the rectification application, the period of limitation of four years shall be counted from the date of last response from the income tax department and relied on the judgment of the Hon’ble Supreme Court in the case of Hindware Industries Ltd.v. CIT (1995) 80 Taxman 79 (SC) where it is decided that 4 years shall be counted from the last order and not from the original order.

6. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we note that the intimation was generated by CPC on 11.12.2016 by not allowing set off of brought forward losses of Rs.1,74,36,319 from income from other sources and allowed set off from LTCG income of Rs.

3,46,05,287/- . The assessee filed objections before the CPC which was disposed on 04.12.2018. Thereafter, assessee filed rectification application u/s. 154 on 26.09.2022 before the AO, which was rejected as time barred by limitation. On appeal, the CIT(Appeals) has held as follows :-

“5. I have carefully considered the matter. Ground 1 both the appeals is general in nature. Grounds 2 & 3 for the AY 2016-17 are against the AO holding that the rectification application is barred by limitation u/s. 154(7). I find that for determining the limitation period u/s. 154(7), the AO has adopted the date of the order u/s. 143(1) as his starting point. He has however ignored the fact that the final response from the CPC is dated 04-12-2018 which was in turn in response to objection raised by the assessee against the demand. On these facts, I am of the view that the AO is in error holding that the rectification is barred by limitation, more so in the light of the fact that the set off of unabsorbed depreciation is available to the assessee on merits. Accordingly, grounds 2 & 3 for the AY 2016-17 are allowed.”

7. Relying on the judgment of the Hon’ble Supreme Court in the case of Hindware Industries Ltd. (1995) 80 Taxman 79 (SC), we uphold the order of the CIT(Appeals) that the rectification application filed by the assessee is within time as per section 154(7) of the Act. We further note that the CIT(Appeals) has remitted the issue back to the AO for verifying the claim of assessee of brought forward losses and allow the same. We find no infirmity in the order of the CIT(Appeals).

8. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 13<sup>th</sup> day of December, 2023.

Sd/-  
( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,

Dated, the 13<sup>th</sup> December, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.