

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Dr. Manish Borad, Accountant Member**

**I.T.(SS)A. Nos. 112 to 117/KOL/2023
Assessment Year: 2016-2017 to 2021-2022**

**Sushil Kumar Mohta And Sons (HUF).....Appellant
9A, Alipore Park Place,
Alipore H.O.,
Kolkata-700027, West Bengal
[PAN:AAFHS7150A]**

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107***

-AND-

**I.T.(SS)A. Nos. 119 to 123/KOL/2023
Assessment Year: 2016-2017 to 2020-2021**

***Deputy Commissioner of Income Tax,....Appellant
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107***

-Vs.-

**Sushil Kumar Mohta And Sons (HUF).....Respondent
9A, Alipore Park Place,
Alipore H.O.,
Kolkata-700027, West Bengal
[PAN:AAFHS7150A]**

IT(SS)A Nos. 112 to 117/KOL/2023
IT(SS)A Nos. 119 to 123/KOL/2023 & ITA 833/KOL/2023
Sushil Kumar Mohta And Sons (HUF) -AND-
IT(SS)A Nos. 124 to 126/KOL/2023 (M/s. Merlin Leisures Limited)

-AND-
I.T.A. No. 833/KOL/2023
Assessment Year: 2021-2022

Deputy Commissioner of Income Tax,....Appellant
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107

-Vs.-

Sushil Kumar Mohta And Sons (HUF).....Respondent
9A, Alipore Park Place,
Alipore H.O.,
Kolkata-700027, West Bengal
[PAN:AAFHS7150A]

-AND-
I.T.(SS)A. Nos. 124, 125 & 126/KOL/2023
Assessment Years: 2016-17, 2017-18 & 2020-2021

Deputy Commissioner of Income Tax,....Appellant
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva, 4th Floor,
110, Shanti Pally, E.M. Bypass,
Kolkata-700107

-Vs.-

Merlin Leisures Ltd.,.....Respondent
Merlin Oxford,
22, Prince Anwar Shah Road,
Kolkata-700033
[PAN:AAACI5256P]

Appearances by:

Shri A.K. Tulsyan, FCA, appeared on behalf of the
assesseees

Shri Rakesh Kumar Das, CIT (DR), appeared on behalf
of the Revenue

Date of concluding the hearing: January 24, 2024
Date of pronouncing the order: March 13, 2024

O R D E R

Per Bench:-

The captioned appeals relate to two assessees, namely M/s. Sushil Kumar Mohta And Sons (HUF) and M/s. Merlin Leisures Limited. Both the assessees as well as the Department have filed cross appeals against the separate orders of Id. Commissioner of Income Tax (Appeals), Kolkata-26 relating to different assessment years. Since the facts and issues involved in all the appeals are same and inter-linked, therefore, for the sake of convenience, all the appeals have been heard together and are being disposed of by this common order.

2. First we take up the appeals relating to the assessee M/s. Sushil Kumar Mohta And Sons (HUF). The assessee Sushil Kumar Mohta And Sons (HUF) in its appeals bearing IT(SS)A Nos. 112 to 117/KOL/2023 for A.Ys. 2016-17 to 2021-22 has taken identical grounds, which read as under:-

“The Id. CIT(A) was wrong in making the addition of 50% of the gross receipts of hospitality business to tax against the rate of profit of 15% from hospitality business offered by the assessee, as such addition should be restricted to 15% of gross receipts of the hospitality business. In the hospitality business, the Id. CIT(A) upheld profit rate @ 50% of hospitality business instead of 15% offered by the assessee. The rate of profit determined by the CIT(A) is very excessive and needs to be reduced to 15% of gross receipts from hospitality business”.

3. On the other hand, Department has also taken identical grounds in all its appeals in the case of M/s. Sushil Kumar Mohta And Sons (HUF) bearing IT(SS)A Nos. 119 to 123/KOL/2023 for A.Y.s 2016-17 to 2020-21 & ITA No. 833/KOL/2023 for A.Y. 2021-22, which read as under:-

(i) That on the facts and circumstances of the case, the Ld. CIT(A) was erroneous for not adopting the net profit method as taken by the AO in 'on money' receipt.

(ii) That on the facts and circumstances of the case, the Ld. CIT(A) was erroneous to direct the AO to treat the unexplained cash receipts as business income.

(iii) That on the facts and circumstances of the case, the Ld. CIT(A) was erroneous to consider the profit rate 15% on estimate basis in respect of cash receipts in real estate business.

(iv) That on the facts and circumstances of the case, the ld. CIT(A) was erroneous to consider the profit rate 50% on estimate basis in respect of hospitality services.

4. Brief facts of the case are that Mohta Family is engaged in the Real Estate Development and Hospitality Business through its various Group Concerns. The assessee, herein, Sushil Kumar Mohta & Sons HUF and M/s. Merlin Leisures Limited are Group Concerns of the said Mohta Family. Search and Seizure operation under section 132(1) of the Income Tax Act (in short "the Act") as well as survey under section 133A was conducted on 18.12.2020 and subsequent dates in the office premises of "Merlin Group of Companies" as well as at the residential premises of the Directors and key persons connected with the Group. During the course of search & seizure operation, the Department found a Cash Book

marked as heading "PRACTICE COMPANY' (G) Cash Book" for the period from February 2015 to June 2020 from the computer backup datas. The same is consolidated Cash Book relating to family members and group concerns. The undisputed details of receipts has been given in the following chart:-

FY	AY	Total receipts	Less: Ibiza Receipt (Hospitality Business)	Less withdrawal from Bank	Less receipt of Holayati considered for Peak working	Net receipt of ON MONEY
15-16	16-17	8,49,62,018	48,69,576	3,00,28,459	76,36,835	4,24,27,148
16-17	17-18	57,85,92,728	1,57,39,600	4,78,65,246	20,29,25,285	31,20,62,597
17-18	18-19	52,07,41,418	23,70,000	2,24,46,000	34,44,65,085	15,14,60,333
18-19	19-20	46,68,74,580	40,00,000	3,33,01,500	15,96,79,760	26,98,93,320
19-20	20-21	51,77,41,909	1,10,00,000	3,68,60,000	17,34,41,600	29,64,40,309
20-21	21-22	1,91,10,100	-	-	-	1,91,10,100
	Total	2,18,80,22,753	3,79,79,176	17,05,01,205	88,81,48,565	1,09,13,93,807

5. A perusal of the aforesaid chart would reveal that the total receipts entered into the said Cash Book were at Rs.2,18,80,22,753/- , out of which an amount of Rs.3,79,79,176/- was the alleged unaccounted receipts from Hospitality Business and an amount of Rs.17,05,01,205/- was out of Bank withdrawals, which, therefore, was not on account of any undisclosed receipts. The receipt from 'Holayati' (temporary movement of funds) was, in fact, the movement of funds out of the total receipts. As observed above, this was the common cash book relating to the receipts of the different Group of Companies /Concerns of Mohta Family.

6. Similarly certain payments/expenditure was also noted in the said Cash Book found during the search action. The details of

such undisclosed payments of cash recorded in the said Cash Book is reproduced as under:-

AY	Total Payments	Less: Bank Deposit	Less: Ibiza Expenses (Hospitality Business)	Less: Holayati Payments considered for Peak working	Less: Personal expenses	Balance: Expense of real estate business
2016-17	8,37,66,194	1,97,61,000	26,38,500	1,32,39,300	8,48,550	4,72,78,844
2017-18	57,23,91,579	27,25,000	83,27,500	21,59,30,700	77,02,910	33,77,05,469
2018-19	51,76,32,500	-	1,23,26,400	24,78,39,300	1,42,21,090	24,32,45,710
2019-20	46,14,40,380	3,90,600	1,14,62,700	16,58,35,800	4,33,42,900	24,04,08,380
2020-21	50,97,62,800	-	16,41,200	20,23,85,000	79,59,000	29,77,77,600
2021-22	3,05,41,600	-	-	1,14,50,000	7,89,100	1,83,02,500
Total	2,17,55,35,053	2,28,76,600	3,63,96,300	85,66,80,100	7,48,63,550	1,18,47,18,503

7. The undisputed facts relating to the entries in the Cash Book in respect of the aforesaid receipts and expenditure has been summarized as under:-

(i) The group is engaged in Real Estate and Hospitality business and unaccounted receipts of these two business are recorded in 'Practice Company (G) Cash Book', which is the basis of addition.

(ii) Practice Company (G) cash book' has following four kinds of receipts-

(a) On money receipts from real estate business;

(b) Unaccounted receipt of hospitality business (Ibiza, Princeton Club);

- (c) Receipts from accounted bank withdrawals;
- (d) Receipts relating to 'Holayati Account'.

(iii) 'Practice Company (G) Cash Book' on the payment side records following five type expenses:-

- (a) Expenses relating to real estate business;
- (b) Expenses relating to hospitality business;
- (c) Deposits made in disclosed bank accounts;
- (d) Payments relating to 'Holayati Account';
- (e) Personal expenses of the members of the HUF.

(iv) The entries in the said Cash Book were mixed entries relating to inter-linked various Group Concerns of the assessee.

(v) Further, in the "PRACTICE COMPANY (G) Cash Book", the term "Holayati" has been used for movement of cash unrelated to business. It is in the form of debit and credit entries of cash mostly in round figures representing inward and outward movement of cash which is not in the nature of business receipts and payments. Various entries like 'Holayati', 'MS Holayati', 'Kabra Holayati', 'Chandan' etc. have been used.

8. The assessee HUF in its returns of income filed under section 153C read with section 143(3) of the Income Tax Act owned up the

entire unaccounted transactions for different assessment years and income thereof in its own name to avoid complication of the matter as it was difficult to correlate each of the entry to a specific transaction and even to a specific concern. From the above chart, it was demonstrated before the Id. Assessing Officer that the total unaccounted receipts from the Real Estate Business after deducting the receipts relating to hospitality business, the receipts out of Bank withdrawals and the receipts of 'Holayati' (which were not business receipts but was the entries relating to the temporary movements of some funds), the total unaccounted receipts came at Rs.1,09,13,93,807/-. From the expenditure account as given in the table above, it was contended that the total business expenditure relating to the Real Estate Business was coming out at Rs.1,18,47,18,503/-, which was more than the total business income recorded in the Cash Book at Rs.1,09,13,93,807/-, therefore, the negative income was coming out from the entries in the said Cash Book.

9. However, the Id. Assessing Officer noted that the expenditure mentioned in the Cash Book was both accounted and unaccounted expenditure relating to different Concerns of the assessee. As noted above, because of numerous entries, it was difficult to correlate each of the entries to a specific concern of the assessee and since the assessee-HUF has owned up the entire income in its hands, therefore, the Assessing Officer treated the entire income from real estate business in the hands of the assessee. The Id.

Assessing Officer, however, ignored the expenditure noted in the Cash Book, but made additions of the receipts including the 'Holayati' entries as unaccounted income of the assessee in respect of Real Estate Business. However, in respect of the unaccounted income in relation to the hospitality business, though the same was owned up by the assessee-HUF, the Id. Assessing Officer considered and added the same in the hands of the another concern of the assessee-Group, namely Merlin Leisures Limited.

10. In the first appeal before the Id. CIT(Appeals), it was pleaded that it was apparent from record that the alleged cash book found during the search action not only contained the entries relating to the receipts but also as well as of the expenditure. If the total of the receipts and expenditure noted in the cash book is to be taken, then the resultant income would be negative. However, it was fairly admitted that the expenditure entries contained both accounted expenditure as well as unaccounted expenditure. It was, therefore, submitted that the assessee has rightly offered 15% as profit on the total receipts, which was fair and enough. The Id. CIT(Appeals) considered this submission and also taken note of various case laws and judicial decisions and held that it was settled law that the seized material has to be read and accepted as a whole and it is not permissible to pick and choose certain entries or make further estimates therefrom, unless and until there is cogent material in support of undertaking such exercise. That all the entries contained in a document are to be read as a whole and it

is not open before the ld. Assessing Officer to take or leave some entries to assess the unaccounted income of an assessee. That the entire documents should be read as a whole and the contents of entire documents have to be considered. The ld. CIT(Appeals) further observed by considering the various case laws that when exact profits cannot be determined from the books of account, seized materials etc., then profit should be determined by taking a reasonable net profit rate on receipts in a particular line of business. That only receipts cannot be held to be the unaccounted income of the assessee, but the expenditure side noted in the seized document has also to be considered. Further, in the ld. CIT(Appeals)'s consideration, profit @ 15% of the receipts in the real estate business was justified. The ld. CIT(Appeals) further accepted the contention of the assessee that Holayati receipts and Holayati payments were not in the nature of revenue receipts/payments, therefore, the said Holayati receipts, which were, in fact, entries relating to the temporary movement of funds out of the receipts noted in the cash book cannot be considered as part of the receipts for the purpose of estimation of profit as it would have amounted to double addition of the same amount. The ld. CIT(Appeals) also noted that the other entries, which were out of the Bank withdrawals were also not to be considered as 'on receipts' in the real estate business. He, therefore, held that the gross amount of 'on money' cannot be taxed as income that only the profit element at certain percentage of the gross receipts could have been brought to tax. He further noted that as per the case

laws cited by the assessee, rate of profit as against the gross receipts of 'on money' in the real estate business has been held to be ranging between 1.31% to 15%. He noted that the rate of profit would vary from developer to developer depending on various factors. He further noted that in the majority of the cases, the profit rate ranges between 12% to 15%. He accordingly restricted the addition in respect of unaccounted receipts @ 15% of the total receipts relating to real estate business in the hands of the assessee HUF.

11. In respect of the hospitality business, the Id. CIT(Appeals) noted that since the assessee HUF has owned up and offered the income from hospitality business, therefore, the Id. Assessing Officer was not justified in making addition in this respect in the case of M/s. Merlin Leisures Limited. He, therefore, held that the addition in relation to the unaccounted income relating to the hospitality business was also required to be made in the case of assessee HUF and not in the case of M/s. Merlin Leisures Ltd. He further observed that the addition made by the Id. Assessing Officer of the entire receipts relating to the hospitality business was not justified. Though, the assessee had claimed that profit @15% be estimated in respect of receipts from hospitality business also, however, the Id. CIT(Appeals) observed that in the hospitality business, the profit margins are very high. He therefore, estimated the profits @ 50% of the total receipts relating to the hospitality business and assessed the income of the assessee accordingly.

12. Now, the assessee as well as the Department has come in appeal before us. The assessee is aggrieved by the action of the Id. CIT(Appeals) in estimating the profit from hospitality business at the rate of 50% of the gross receipts, however, the Department's case is that the action of the Id. CIT(Appeals) in restricting the addition to the extent of profit element, i.e. @ 15% in case of real estate business and @ 50% in respect of hospitality business is not justified as against the action of the Assessing Officer in adding the entire receipts into the income of the assessee. The Department, however, has not contested against the action of the Id. CIT(Appeals) in excluding the "Holayti Receipts" and receipts on account of bank withdrawals out of total receipts.

13. We have heard the rival contentions and gone through the record carefully. Since it was not possible to correlate each of the entries with the specific transaction and even to a specific concern, therefore, to avoid any type of confusion and difficulty in assessing separate income of all the concerns of the Mohta Family, the assessee HUF owned up the entire undisclosed income in its own hands. The Id. Assessing Officer has also added the entire unaccounted receipts relating to the real estate business in the hands of the assessee-HUF and there is no contest on this issue. We, therefore, uphold the order of the Id. CIT(Appeals) in this respect.

14. So far as the action of the ld. CIT(Appeals) in restricting the addition @15% of the gross receipts in respect of the real estate business is concerned, we do not find any infirmity in the order of the CIT(Appeals) to that extent. It has been held time and again by the various courts of law that the seized document is to be read as a whole. It is not open to the ld. Assessing Officer to pick certain entries from the documents and ignore other entries. For estimating the unaccounted income not only receipts mentioned in the seized documents are to be considered but also the entries relating to expenditure. Admittedly in the alleged seized cash book, there were the entries not only relating to the unaccounted receipts but also relating to the expenditure thereof. The ld. CIT(Appeals) has rightly noted that the contents of the entire documents have to be taken into consideration and what can be added into the income of the assessee is the profit element involvement and not the entire receipts especially when there were entries noted in the alleged cash book relating to the expenditure also. The ld. CIT(Appeals) thoroughly considering the entire facts and circumstances of the case and also considering various case laws has given a categorical observation that in respect of real estate business, the profit element ranges between 1.31% to 15%. The profit element in the real estate business depends upon the various factors including the demand and supply ratio, location of the

property and other development factors. The ld. CIT(Appeals) has taken the maximum profit ratio i.e. @15% as available from the data/case laws. The ld. D.R. could not point out as to how the ld. Assessing Officer was justified in making addition for the entire receipts ignoring the expenditure side mentioned in the seized documents. The ld. D.R. also could not point out any infirmity in the order of ld. CIT(Appeals) in estimating the profit ratio @15% in the real estate business. The order of the CIT(Appeals) is, therefore, upheld relating to estimation of profit in respect of Real Estate business in the hands of the assessee HUF.

15. So far as the estimation of profit by the ld. CIT(Appeals) @50% in hospitality business is concerned, the ld. A.R. of the assessee has given the details relating to the hospitality receipts. The profit computed by the ld. CIT(Appeals) is @50% and whereas the assessee pleads that the rate of profit be estimated 15%. The following chart has been referred to in this respect:-

AY	Total receipt/ On money (Rs)	Profit computed by the CIT(A) by applying rate of profit of 50%	Profit by applying rate of profit of 15%
2016-17	1,69,67,833	84,83,917	25,86,651
2017-18	1,57,39,600	78,69,800	23,60,940
2018-19	23,70,000	11,85,000	3,55,500
2019-20	40,00,000	20,00,000	6,00,000
2020-21	1,10,00,000	55,00,000	16,50,000

2021-22	55,81,000	27,90,800	8,37,240
Total	5,73,35,537	2,78,29,517	83,90,331

16. The Id. Counsel for the assessee in this respect has referred to some Articles to plead that in the hospitality business, net average profit margin ratio of selected Indian Hotels during 2008-09 to 2017-18 ranges from 1.243% to 16.112%. He in this respect further relied upon the following chart extracted from the Journal of Emerging technologies and Innovative Research (JETIR):-

Article 1 - "AN ANALYTICAL STUDY ON PROFITABILITY OF SELECTED INDIAN HOTELS"

4.2 NET PROFIT MARGIN RATIO (%)

This ratio measures the relationship between net profit and net sales. Net profit is calculated after deducting amount of operating expenses, interest and taxes from the gross profit amount.

Net Profit Margin Ratio (%) Of Selected Indian Hotels during 2008-09 to 2017-18

YEAR	IHCL	EIH	MHR	HLV	ITDC
2008-09	14.45	19.17	21.22	32.05	6.85
2009-10	10.39	7.39	25.13	9.53	-5.26
2010-11	8.44	6.28	21.09	8.15	-2.31
2011-12	8.03	11.11	18.23	3.26	2.14
2012-13	-14.74	4.49	16.24	-66.29	0.73
2013-14	-30.6	7.72	12.15	-61.44	2.14
2014-15	-4.05	7.3	9.94	-55.08	7.27
2015-16	8.84	7.69	12.33	-27.25	5.15
2016-17	5.96	7.56	12.17	-2.21	3.45
2017-18	5.71	8.31	12.62	-3.23	6.86
AVERAE	1.243	8.702	16.112	-16.251	2.702
S.I).	13.95755	4.029306	5.08294	34.181	4.1493

(Source: www.moneycontrol.com)

The above extract is from the Journal of Emerging Technologies and Innovative Research (JETIR) (www.jetir.org).

17. Ld. Counsel has also referred to another Article to plead that the average Hotel Profit Margin lies at around 10%. He also referred to the decision of the Hon'ble Kerala High Court in the case of CIT -vs.-Settlement Commission (IR&WT) reported in (2011) 12 taxmann.com 185 (Kerala), wherein it has been held as follows:-

"A reading of Ext.P4 order passed by the Settlement Commission while admitting the application shows that the Assessing Officer had estimated the gross profit in the liquor division at 45 per cent. With regard to the voluntary statement, in para 6 it is clearly mentioned that the basis for estimate of the gross profit was mainly the admission made by the second respondent which was seen retracted later on. Significantly, it is mentioned that the instances of suppression of sales unearthed by the department as a result of the search under section 132 of the Act were only two or three in the year 1998. It is on the basis of these instances, the Assessing Officer had resorted to estimate the gross profit for all the three assessment years. While considering the pleas raised by the Revenue, these observations are significant. A reading of Ext. P2 order shows that with regard to the sale of liquor, the Settlement Commission had determined the net profit at 3.75 per cent on the total turnover in the case of M/s. Hotel Vysali & Mayur Bar and the same method was adopted in the case of the second respondent also. There is no case for the petitioner that they had challenged the method adopted in respect of Hotel Vysali & Mayur Bar or the same has been set aside in any proceedings. It is therefore dear that the method adopted cannot be said to be arbitrary. Actually, as far as the sales of food articles are concerned, the profit rate is estimated at 20 per cent as adopted by the Assessing Officer".

The ld. counsel, therefore, has submitted that even as per decision of the Hon'ble High Court, in the hotel business, the net profit has been determined at 3.75 per cent on room rent, whereas on the sales of food articles, the net profit has been estimated at 20%. The ld. A.R., therefore, has submitted that the assessee has offered just and fair profit @ 15% on all the receipts from the hospitality business.

18. We note that the Id. CIT(Appeals) has not referred to any data or case law to say that the profit margin in the hospitality business is generally @50%. However, the assessee has relied upon certain data to submit that it depends from hotel to hotel and place to place for the profit margins in the hospitality business. There are so many factors in the hospitality business that effect the profit element. Referring to the chart given above, he has submitted that though the average profit of the 'MHR' hotel for the last 10 years has been shown @ 16.112% , whereas the average profit of 10 years of Hotel 'HLV' has been shown at a loss of (-)16.22%. That otherwise the average profit from the hotel business lies around 10%. Considering the overall facts and circumstances of the case, we find that the estimation of profit @50% by the Id. CIT(Appeals), since has not based on any reliable data, is not justified, whereas the assessee has demonstrated that the average profit lies around 10% and further it depends upon various factors especially the location of the hotel, infrastructure available and other various factors. The assessee in this respect has relied upon the data available and case laws. Considering the overall facts and circumstances, in our view, 15% profit offered by the assessee on the said receipts from hospitality business is also justified. The same is accordingly restricted to 15% of the receipts.

19. In view of the above discussion, the appeals filed by the assessee stand allowed and the order of the Id. CIT(Appeals)

estimating the profit @15% of the unaccounted receipts from real estate business is upheld. The action of the ld. CIT(Appeals) in excluding the Holayati entries and receipts from bank withdrawals, even not contested by the Revenue, is also upheld. The order of the ld. CIT(Appeals) holding that the hospitality income is also to be assessed in the hands of the assessee M/s. Sushil Kumar Mohta & Sons HUF is also upheld. However, the order of the ld. CIT(Appeals) is modified to the extent that the profit margin in respect of unaccounted receipts from hospitality business be estimated @15% instead of @ 50%.

20. So far as the appeals of the Revenue bearing IT(SS)A Nos. 119 to 123/KOL/2023 and ITA No. 833/KOL/2023 in the case of Sushil Kumar Mohta & Sons HUF for A.Ys. 2016-17 to 2021-22 are concerned, the Revenue has assailed the order of ld. CIT(Appeals) on the ground that the ld. CIT(Appeals) has treated the unaccounted receipts as business income and thereby estimated the profit thereupon instead of the action of Assessing Officer in making the addition of the entire receipts.

21. In view of our discussion made above, there is no merit in the appeals of the Revenue and the same are accordingly dismissed.

22. Now coming to the appeals of the Revenue relating to the assessee M/s. Merlin Leisures Ltd. bearing I.T.(SS)A. Nos. 124, 125 & 126/KOL/2023 for Assessment Years 2016-17,

2017-18 & 2020-2021. So far as the action of the ld. CIT(Appeals) in assessing the income from hospitality business in the hands of Sushil Kumar Mohta & Sons HUF instead of Merlin Leisures Ltd., the revenue is not aggrieved by the said action. The Revenue is only concerned about the taxation of the unaccounted income. The order of the ld. CIT(Appeals) is, therefore, upheld in assessing the income from hospitality business in the hands of Sushil Kumar Mohta & Sons HUF.

23. The only grievance of the Revenue is relating to the action of the ld. CIT(Appeals) in assessing the profit element only instead of the entire receipts as was made by the ld. Assessing Officer. As discussed above, the ld. CIT(Appeals) was justified in adding up the profit element instead of entire receipts and was also justified in holding that the contents of the seized documents are to be read as a whole and that the income cannot be estimated taking into account only receipt entries ignoring the expenditure entries.

24. In view of our discussion made above, we have already modified the order of the ld. CIT(Appals) in the case of Sushil Kumar Mohta & Sons HUF and have held that 15% of the total receipts should be taken as profit from hospitality business. Therefore, there is no merit in the

Revenue's appeal bearing IT(SS)A Nos. 124, 125 & 126/KOL/2023 and the same are accordingly dismissed.

25. In the result, the appeals of the assessee stand allowed and the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 13/03/2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sanjay Garg)
Judicial Member

Kolkata, the 13th day of March, 2024

- Copies to :*(1) Sushil Kumar Mohta And Sons (HUF),
9A, Alipore Park Place,
Alipore H.O., Kolkata-700027, West Bengal
- (2) Merlin Leisures Ltd.,
Merlin Oxford,
22, Prince Anwar Shah Road, Kolkata-700033
- (3) *Assistant Commissioner of Income Tax,*
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107
- 4) *Deputy Commissioner of Income Tax,*
Central Circle-2(3), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107
- (5) *Commissioner of Income Tax (Appeals),*
Kolkata-26;
- (6) *CIT-* , *Kolkata*

IT(SS)A Nos. 112 to 117/KOL/2023
IT(SS)A Nos. 119 to 123/KOL/2023 & ITA 833/KOL/2023
Sushil Kumar Mohta And Sons (HUF) -AND-
IT(SS)A Nos. 124 to 126/KOL/2023 (M/s. Merlin Leisures Limited)

(7) *The Departmental Representative;*
(8) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.