

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. Nos. 372 & 373/Kol/2023**  
**Assessment Year: 2016-17 & 2017-18**

<b>Apeejay Surendra Park Hotels Ltd.</b> Apeejay House 15, Park Street Kolkata - 700016 <b>[PAN : AAACB7961L]</b>	Vs	<b>Deputy Commissioner of Income Tax, Circle-8(1), Kolkata</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manish Tiwary, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 20/12/2023  
घोषणा की तारीख /Date of Pronouncement: 18/03/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeals are directed at the instance of the assessee against the order of the National Faceless Appeals Centre, Delhi [hereinafter the "ld. CIT(A)"] evenly dt. 28/02/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Years 2016-17 and 2017-18.

2. The first common ground raised by the assessee for both the Assessment Years is that the ld. CIT(A) erred in confirming the action of the ld. Assessing Officer disallowing interest on borrowed funds. For the sake of convenience, facts in respect of this issue is taken from ITA No. 372/Kol/2023; Assessment Year 2016-17.

3. Facts in brief are that the assessee is a limited company engaged in hotel business. Nil income declared in e-return for Assessment Year 2016-17 furnished on 17/10/2016. Case selected for scrutiny and valid notice u/s 143(2) and 142(1) of the Act were served upon the assessee. With regard to the issue on hand of disallowance of interest on borrowed funds, the ld. Assessing Officer noticed that the assessee has taken long term and short term borrowing and capital work in progress (CWIP) is also appearing in audited balance sheet. Interest expenditure has been claimed at Rs.42.27 Crores approx, but there is no capitalisation of interest under the head capital work in progress. Though it was claimed by the assessee that fresh loans for current year were given for working capital requirement but the increase in capital work in progress, has been carried by the assessee's own funds. However, the ld. Assessing Officer was not satisfied and he, taking the basis for financial year 2010-11, where the interest capitalized was 5.41% of the total interest expenditure incurred during the year, applied the same rate on the interest expenditure for the year under appeal and disallowed a sum of Rs.2,31,39,148/-. The assessee challenged the addition before the ld. CIT(A) who dismissed the ground observing that the appellant has not led any evidence to establish that the funding was mostly for generation of own funds.

4. Aggrieve the assessee is now in appeal before this Tribunal.

5. The ld. Counsel for the assessee submitted that during the year, no new project has commenced and the additions to the fixed assets are

mainly on account of repair and expansion purposes and the loans taken during the year have been applied thereto. He also submitted that increase in capital work in progress has been funded from the assessee's own funds which are quite substantial in comparison to the investments made during the year. He also submitted that in the past, the assessee has been *suo moto* capitalizing the interest incurred on acquiring fixed assets. He, further added that the books of accounts are duly audited and correct amount of interest expenditure of revenue in nature has been claimed incurred for business purposes.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

6. We have heard rival contentions and perused the material placed before us. The issue for our consideration is whether the Id. CIT(A) has erred in confirming the action of the Assessing Officer disallowing the interest on borrowed funds at Rs.2,31,39,148/-. We notice that the alleged sum has been computed by the Assessing Officer adopting the rate of interest capitalization for financial year 2010-11 @ 5.41%. There is no specific finding by the Assessing Officer about any capital asset being acquired during the year for which long term /short term borrowings have been taken. The alleged disallowance is purely on estimate basis without rejecting the book results.

7. We have perused the audited financial statements and notice that the capital work in progress as on the close of the current year is Rs.29.21 Crores as against Rs.26.36 Crores as on 31/03/2015. So, there is

increase in the CWIP of intangible assets by Rs.2.86Crores approx. We also notice that the equity share capital and accumulated reserve and surplus as on 31/03/2016 stood at Rs.607.08 Crores. Considering the same, we find force in the contention of the ld. Counsel for the assessee that the funds utilised for increase in CWIP have been funded from the assessee's own accumulated funds. Further we notice that there is hardly any increase in the long term borrowings and the increase in short term borrowings is applied for working capital requirement. Books of accounts are audited and against the total interest expenditure of Rs. 42.77 Crores, the revenue authorities have disallowed Rs.2.31 Crores approx. merely on estimation basis. When the books of accounts are regularly maintained and duly audited, the assessee has sufficient funds and there is no finding of the revenue authorities indicating that any specific long term /short term borrowings have been utilized for acquiring fixed assets or CWIP during the year, the alleged disallowance is uncalled for. Relevant finding of the ld. CIT(A) on this issue is set aside. Accordingly, the alleged disallowance of interest on borrowed funds is deleted and Ground No. 1 raised by the assessee and for Assessment Year 2016-17 is allowed.

8. Ground No. 1 for both the Assessment Years i.e., 2016-17 and 2017-18, are verbatim identical, except for variance in quantum, the facts being identical for both the Assessment Years. Therefore, the decision rendered by us while adjudicating the sole Ground No.1, raised for Assessment Year 2016-17 shall apply *mutatis mutandis* for

Ground No. 1 raised for Assessment Year 2017-18. Accordingly, Ground No. 1 raised for Assessment Year 2017-18 is also allowed.

9. Now we taken the remaining Ground for Assessment Year 2017-18.

10. Ground No. 2 is dismissed as not pressed.

11. Ground No. 3 relates to disallowance u/s 40(a)(ia) of the Act at Rs.69,970/- incurred by the assessee for payment allegedly made towards technical fees. We after going through the facts of the case, findings of the lower authorities and submissions made by the assessee, notice that the for incurring expenditure towards annual maintenance charges (AMC) for *online reputation and customer satisfaction software management*, payment was made to foreign company, namely, to Howazit Ltd., Israel. The Assessing Officer treated this as a technical fees payment and made disallowance u/s 40(a)(ia) of the Act for non-deduction of tax.

12. We, however, on perusal of page 47 to 49 of the paper book, where the copies of tax invoices are placed, notice that the alleged sum has been paid towards AMC services for utilizing the *software for online reputation and customer satisfaction management* and is basically a guest feedback system which the assessee has used in its hotel business. It is not the case of any fees for technical services. The alleged sum being normal AMC charges, paid to foreign company having no permanent establishment in India, no tax at source is deductible from the said sum as services were provided from outside India and no technical

knowhow was made available to the assessee company. Thus, the ld. Assessing Officer erred in invoking section 40(a)(ia) of the Act. Accordingly, relevant finding of the ld. CIT(A) is set aside and the disallowance of Rs.69,970/- is deleted. Ground No. 3 raised for Assessment Year 2017-18 is allowed.

13. Other Grounds being general in nature, needs no adjudication.

14. In result, appeal of the assessee for Assessment Year 2016-17 is allowed and for Assessment Year 2017-18 is partly allowed.

**Order pronounced in the Court on 18<sup>th</sup> March, 2024 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 18/03/2024

*Sd/-*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata