

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 3011/Mum/2023

(A.Y: 2017-18)

JMJ Ganpatiji Maharaja Hospitality Pvt Ltd. (Formerly Asrani Inns and Resorts Pvt Ltd) Plot No.1 & 2, Netaji Subhash Palace, Wazirpur District Center Pitampura, Delhi-110088.	Vs.	DCIT,C.C.2 (2), 806,PratishthaBhavan, Old CGO Building, Mumbai-400020.
PAN/GIR No. : AACCA9781D		
Appellant	..	Respondent

Appellant by :	Shri.Neelkant Khandelwal.AR
Respondent by :	Ms.Rajeshwari Menon, Sr. DR

Date of Hearing	06.03.2024
Date of Pronouncement	17.04.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-48, Mumbai passed u/sec 143(3) and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

“ The Ld. CIT(A) erred on facts and in law by not allowing the business loss of Rs. 2,31,42,313/- and restricting the allowability of business loss, to the payments made upto the date of 06.11.2008 only, at Rs. 3,92,00,000/- out of the aggregate business loss, being advances given to contractor for repairs, maintenance and renovation of appellant company’s Hotel of Rs. 6,23,42,313/-“

2. The brief facts of the case are that, the assessee company is engaged in the business of construction and running hotels and resorts. The assessee company has filed the return of income for the A.Y 2017-18 on 31.10.2017 disclosing a total income of Rs. Nil. The case was selected for scrutiny for examining the following issues (a) Deduction & Deposit of TDS (b) Investments / advances loans & (c) Expenses incurred for earning exempt income. Subsequently, the Assessing Officer (AO) has issued the notice u/sec143(2) and u/sec142(1) of the Act through ITBA, and found that the assessee had an operational Hotel in Hiranandani, Powai, Mumbai and had commenced the construction of Hotels in other places. The AO on perusal of the information, return of income and audited financial statements find that the assessee has written off by way of sundry balances Rs.6,24,02,772/- and the AO has issued show cause notice to explain the justification of claim, whereas the assessee has filed the detailed reply on

16.10.2019 explaining the nature of claim of write off of sundry balances and reasons referred at Para 5 of the order. Whereas the AO has dealt on the information and details and has observed that the assessee has commenced hotel repair and renovation during the year 2008 and for which it has advanced the money to contractor M/s Design N Build. Since the repair work was not to the expectations of the assessee, therefore the dispute arise and the contractor neither returned the money nor improved the quality of the work and the advance amounts paid was standing in the name of the contractor in the books of account. Whereas in F.Y 2016-17 i.e based on the expert opinion report dated 15.04.2016, it was confirmed that the substandard quality of the work was carried out by the contractor, and the assessee has claimed the balances/ advances in the name of the contractor as written off and debited to profit & Loss account.

3. Further the assessee has submitted the explanations on the facts and the genuineness of the claim of expenses/ repair work, which was not recoverable and has written off the debit balance in the repair work in progress dealt at Para 5.2 of the order. Whereas the AO was not satisfied with the explanations and observed that the assessee has

disclosed the amount under the loans and advances and has claimed as written off in the profit and loss account. Further the assessee could not establish the claim as per the provisions under section 36(1)(vii) of the Act. The AO observed that the assessee has not incurred any expenditure in the current financial year and the amount of expenditure of repairs and renovation was incurred in the F.Y 2008-09 to F.Y 2010-11 and the claim takes the character of prior period expenses and has disallowed the sundry balances written off of Rs.6,23,42,313/- and assessed the total income of Rs. 7,74,00,687/- and passed the order u/sec 143(3) of the Act dated 30.12.2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has granted partial relief by sustaining the disallowance to the extent of Rs. 2,31,42,313/- and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the partial disallowance

though the assessee has incurred the expenditure in the earlier years and complied with the accounting policies and are disclosed in the audited financial statements. The Ld. AR contentions are that the assessee has advanced the amounts to the contractor in the earlier years for conducting repairs of its operation hotel in Mumbai, since the repair work conducted by the contractor was of substandard quality and in the F.Y 2016-17, as per the terms and conditions, it was referred to the dispute resolution process and as per the expert report, the contractor is directed to refund the payments received from the assessee or redo and complete the work within 3 months from date of expert report dated 15-04-2016. Since the contractor has not completed the work nor refunded the payments received, within the stipulated period. The assessee has written off the claim in the F.Y.2016-17 and the Ld. AR substantiated the submissions with the factual paper book, judicial decisions, and synopsis and prayed for allowing the appeal. Per Contra, the Ld.DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole grievance envisaged by the Ld.AR that the CIT(A) has erred in sustaining the partial disallowance

of sundry balance written off in repair works irrespective of the facts that the assessee has made payments to contractor in earlier years for repairs and renovation of the assessee hotel. Since the repair work was not to the expectations of the assessee, therefore the dispute arise and the contractor neither returned the money nor improved the quality of the work and the amount of advance paid was standing in the name of the contractor in the books of account. Whereas in F.Y 2016-17 i.e based on the expert opinion report dated 15.04.2016, it was confirmed that the substandard quality of the work was carried out by the contractor, the assessee has claimed the balance/ advances in the name of the contractor as written off and debited to profit & Loss account. The Ld. AR has referred to the terms and conditions with the contractor as per the agreement dated 21.12.2007 for repairs and renovation of the entire hotel for total consideration of Rs.12 Crores placed at page 119 to 140 of the paper book. Whereas in the financial year 2008-09, the assessee has debited aggregate amount on account payment/ advances of Rs.6,23,42,313/- towards “ repair works in progress” paid to Design N Build contractor, as per the ledger account placed at page 186 of the paper book and are

disclosed under “Loans and Advances” in the balance sheet. But due to none satisfactory repair works of the contractor, the assessee has stopped making further payments after 7.11.2012 and the Ld.AR demonstrated the letters and details of work list acknowledged by the contractor placed at page 141 to 155 of the paper book. Further the contractor has demanded the balance payment of amount as per the agreement. whereas the assessee has advanced the amounts to the contractor in the earlier years for conducting repairs of it operation hotel in Mumbai, since the repair work conducted by the contractor was of substandard quality and in the F.Y 2016-17, as per the terms and conditions, it was referred to the dispute resolution process and as per the expert report, the contractor is directed to refund the payments received from the assessee or redo and complete the work within 3 months from date of expert report dated 15-04-2016. Since the contractor has not completed the work nor refunded the payments received, within the stipulated period and the assessee has written off the claim in the F.Y.2016-17 as it was crystallized based on the expert report. Whereas in the appellate proceedings, the CIT(A) has accepted the repair expenditure in respect of the year under reference but not

of the earlier years and accepted the expenditure as allowable and incurred for the business purpose. Whereas the CIT(A) has accepted the payments made up to letter dated 6.11.2008 and allowed the claim, but subsequent payments made after dispute arise was not allowed. At this juncture, we consider it appropriate to refer to the observations of the CIT(A) in granting partial relief dealt at Page 23 Para5.10 &5.12 of the CIT(A) order read as under:

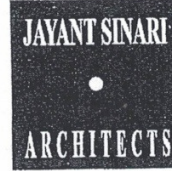
“5.10 On careful consideration, I am in agreement with the Id. AR that the contract work was started as per the agreement dated 21.12.2007 and payments were made in the light of various clauses of the agreement. Payments were treated as advance to the contractors and not debited to the P&L account in the respective years. It also appears from various documentary evidences filed that since the appellant was not satisfied with the repair work of the contractor it started highlighting this through various letters beginning from November 2008. The first of such letter was issued on 6.11.2008 where it is clearly mentioned that the progress is very slow, the work is not at all satisfactory and of very poor workmanship and material used are of poor quality. Hence, the claim of the AO that loss is of prior period nature and not allowable during the year under consideration is not as per the books of accounts of the appellant where the amount was not debited but treated as advances to the contractor only. Non admissibility of prior period expenses can be attempted by the AO in view of the general accounting principle but in the present case, the amount represents loans and advances and forming part of the balance sheet and cannot be given similar treatment.”

5.11 In my considered view, the loans and advances which are given for business purpose but neither recoverable nor the work getting completed on subsequent period per take the character of business loss and eligible for write off. The assessee can claim deduction of the same when such loss gets crystallised on a subsequent period as held in various judicial decisions including Hon'ble Bombay High Court mentioned in the preceding paragraphs. Now only question to be answered is how much business loss has actually taken place which can be allowed in the present situation. In my view, till the came to the knowledge of the appellant that the progress of work by the contractor is very slow, poor and defective work quality material and workmanship were undertaken during the repair works, there is no reason not to allow such business loss. However, when the appellant company issued letter highlighting these problems first on 06.11.2008, there is no reason to continue with the advances notwithstanding poor & defect work. When this query was raised, the ld. AR replied that it was necessary for the purpose of business as the appellant company was expecting that the defective work will be redone and completed. However, I do not agree with this argument. No prudent business person will keep on advancing or handing over the money to a constructor even after the defective and non-satisfactory work came to the light and letters were being issued to this effect. From the ledger account of payment sheet, it is noticed that before the issue of letter on 06.11.2008, the contractor had raised three RA bills of Rs.1,23,32,880, Rs.1,23,32,880 and Rs.1,17,16,236 and received payments accordingly. The opening balance as on 01.04.2008 is Rs.37,00,000 and payments made against these three RA bills are Rs.3,55,00,000. Thus the total payment works out to Rs.3,92,00,000. The balance payment has been made subsequent to issue of defective notice dated 06.11.2008. Looking to the overall facts and circumstances, the business

loss admissible will be Rs.3,92,00,000 to the extent of which the disallowance made by the AO deserved to be deleted. The balance amount of Rs.2,31,42,313 is confirmed. The AO is directed accordingly. The grounds of appeal no. 1 and 2 are partly allowed.”

7. On perusal of the further facts and information, when a query was raised to Ld. AR to explain the reasons for not claiming the write off in the earlier years, the explanations are that the repair work conducted by the contractor was of substandard quality and in the F.Y 2016-17, as per the terms and conditions, it was referred to the dispute resolution process and as per the expert report, the contractor is directed to refund the payments received from the assessee or redo and complete the work within 3 months from date of expert report dated 15-04-2016. Since the amount was crystallized based on the expert report, the assessee has claimed in the Profit & Loss account in the A.Y. 2017-18. The expert report has considered the terms and conditions of the agreement of parties dated 21-12-2007 and dealt on the factual aspects of work in progress and on the quality issues and letters/ correspondence between the parties. The Expert report is not disputed and is placed at page 156 to 158 of the paper book as under:

JAYANT SINARI ARCHITECTS
• ARCHITECTS • ENGINEERS • INTERIOR DESIGNERS
• INDUSTRIAL PROJECTS • REDEVELOPMENTS
• GOVT APPROVED VALUERS
1, AHMED MANSION, K DHURU RD 1704-05, THE CORPORATE PARK,
OPP. KIRTI COLLEGE, PRASHADEVI NEAR WARANA DAIRY, PLOT NO.14815,
M U M B A I - 4 0 0 0 2 6 S E C T O R - 1 8 , V A S H I .
P H O N E : 2 4 3 6 8 9 4 2 N A V I M U M B A I - 4 0 0 7 0 5 . P H O N E : 2 7 6 6 9 1 9 9
W E B S I T E : w w w . j a y a n t s i n a r i . c o m E M A I L : j s i n a r i 1 1 8 @ y a h o o . c o m



EXPERT REPORT

This dispute resolution process is initiated by and between

M/s. Asrani Inns & Resorts Private Limited,
.....First Party / Client / Claimant
and

M/s. Design N Build,
.....Second Party / Contractor

Both the above parties entered into a lumpsum agreement dated 21st December 2007, wherein it was agreed that Second Party shall Design, Repair, Renovate, Furnish, Electrical, mechanical, Plumbing, Fire Fighting, Painting of The Beattle Hotel (owned and operated by the First Party) on Turnkey basis. (The copy of the Agreement is enclosed and marked as Annexure - 1)

I have been approached and appointed by both the above parties, to verify the claims and counter claims made by each of the parties over the other and determine and value the executed quantum of work done and quality of workmanship and materials used in execution of the contract work.

Second Party has claimed to have started work on the basis of the above agreement after receiving the mobilization advance and design preparation charges. The First Party claims to have made periodic payments, on being presented with the Running Account bills raised by the second party on adhoc basis in order to get the repair work done smoothly and without any delay, so as to cause least hindrance to the hotel business. The copy of account statement giving the details of payments made aggregating to Rs.6,23,42,313 is enclosed and marked as Annexure - 2, and the Running Account bills are enclosed and marked as Annexure -3.

The First Party has claimed that on verification of the partly executed work by the second party various quality issues as to the workmanship and materials used were noticed and communicated to the second party through snag lists / checklist, the copy of snag lists are enclosed and marked as Annexure - 4.

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The First Party claims that inspite of various oral reminders and written letters and notices to the Contractor (Second Party) there has been neither any rectification of any kind nor any response. The First Party claims that timing was the essence of contract and stretching the repair work for years by the second party led to huge business losses for First Party.

Second Party claims to have completed the work and has consequently raised Running bills aggregating to Rs. 12,00,00,000/= and confirms having received Rs.6,23,42,313 and claims the balance outstanding Rs.5,76,57,687 from the First Party.

In order to verify the claims and counter claims, I have Visited and Surveyed the work done at The Beatle Hotel on 10th April 2016, alongwith the representatives of both the parties to the Dispute. Following are my observations of the claimed work done by the Contractor.

- a) Doors and Windows
The locks of the self closing doors were of poor quality and were not working properly. The doors and windows did not close properly due to faulty installation and poor quality of hinges used. It is observed that due to poor workmanship and faulty installation side walls and flooring tiles surfaces are damaged in various rooms.
- b) Ceiling
The ceiling joints are done in a very haphazard manner causing cracks in the ceiling. The holes and for lighting and smoke detectors were irregular.
- c) Walls
Tape joints are not properly sanded and painted further Post Plastered surface was not cured as per required curing parameters due to which dings, gouges and crushed corners are found at each of the room walls.
- d) Cabinets
Hinges quality is abysmally low and doors do not close evenly and smoothly. In most of the rooms the doors did not close properly
- e) Flooring
Flooring Joints have not been properly grouted leading to development of joint cracks and floor level undulation.

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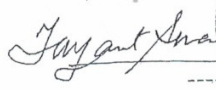

- f) Plumbing
Extremely poor quality of workmanship and material has been observed causing Floor and wall dampness damaging the adjoining gypsum wall partition and plywood wall partitions.
- g) Electrical
Damage to Air conditioners and other fittings observed due to lower gauge and lower capacity of cable and circuit wires used during the renovation time. Sockets have not been fitted and not working properly.

It is observed that the snag list for the executed work by the First Party has been totally ignored and hence there has been blatant negligence on the part of the Contractor while carrying out the renovation work.

It is also observed that the material used by the respondent for the renovation work was of poor and low grade quality due to which the work carried out by the respondent was not as per required standard.

As such, there is no reason to disbelieve the allegations made by the First Party and no objection has been raised by the Second party to the documents submitted by the First Party. After having perused the accounts and payments made to the Contractor and surveyed the work claimed to have been done by the Contractor, the claim raised by the First Party is just and proper. The value of work done by the Contractor is not more than Rs. 50 Lakhs, on the contrary the use of local and unbranded material and shoddy workmanship has resulted in far greater losses to the claimant.

The Contractors claim of Further payment of Rs.5,76,57,687 is outright unjustified. I therefore hereby direct the Contractor to refund the entire payments made by the claimant of Rs. 6,23,42,313 or redo and complete the entire work within 3 months.



JAYANT SINARI
Architects

Date : 15th April 2016

Place : Mumbai

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8. We considering the facts and submissions find that the CIT(A) has not doubted the genuineness of the transactions or the claim but the payments made by the assessee after 6.11.2008 was not accepted as the assessee has made further payments in spite of dispute on the quality of work. The contentions of the Ld.AR are that the CIT(A) having accepted the payments till 06.11.2008 and allowed deduction and there is no reason to reject the claim of the assessee in the subsequent period. It was contented that it is very difficult for the assessee after making the substantial payments to contractor and work was not to the satisfaction and the assessee has to get the work completed and could not stop the payment for the remaining work completion by the contractor. Further finding a new contractor and restarting the work is tedious and time consuming process. Since the assessee has realized that the contractor is not able to meet the requirements, the assessee has stopped the payments after year 2012 and the refused to pay the balance payment out of Rs. 12 crores which worked out to Rs.5,76,57,687/- to the contractor Prima-facie the assessee has incurred the expenditure which is not doubted by the AO only on technical reasons the CIT(A) observed that the assessee

after coming to know the facts of dispute has made the payments even after 06.11.2008 and has not allowed the payment to the extent of Rs.2,32,43,313/-. We find that the CIT(A) has accepted the facts that this expenditure was incurred and disclosed under the work in progress and repairs. Whereas in the assessment proceedings, the AO has made observations with respect to prior period expenses not allowable but the genuineness of the expenditure was not doubted. Further the assessee has incurred the expenditure wholly and exclusively for the purpose of business and has disclosed in the financial statements as per the accounting standards and accounting guidelines. Further the CIT(A) has allowed the payment made till 06.11.2008 but only on the one reason that after having knowledge of the defect the assessee should not have made payment and has disallowed but the fact remains that the assessee was expecting that the contractor will complete the work/ rectify the defects and make good in reasonable time. Since the contractor has not completed the work nor refunded the payments received, within the stipulated period the assessee has written off the claim in the F.Y.2016-17 based on expert report and crystallization of the claim which is not disputed. We

considering the facts and circumstances do not find any basis or reasons by the CIT(A) in restricting the claim of the assessee and accordingly direct the Assessing officer to delete the disallowance sustained by the CIT(A) and we allow the grounds of appeal in favour the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.04.2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17.04.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai