

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.3109/DEL/2018
(Assessment Year: 2014-15)**

M/s. IHHR Hospitality Pvt. Ltd.,
32/7, Samalka, NH 8,
New Delhi – 110 037.

vs.

Addl. CIT,
Range – 04,
New Delhi.

(PAN : AAACI9385B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ranjan Chopra, CA
REVENUE BY : Shri Javed Akhtar, CIT DR

Date of Hearing : 30.05.2024
Date of Order : 04.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-35, New Delhi dated 13.02.2018 for the assessment year 2014-15.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the Revenue has erred in law and on facts in making disallowance of ‘Project Pending Capitalization written off’ expenses, amounting to Rs.7,71,40,000/- and treating these expenses to be of capital nature.

2. That the Revenue has erred in law and on facts in disallowing interest of Rs.5,40,62,940/- u/s 36(1)(iii) of the Income Tax Act, 1961. (REVISED GROUND).

3. That the Revenue has erred in law and on facts in disallowing a sum of Rs.9,61,305/- on account of claim of ROC fee under section 35D of the Income Tax Act, 1961.

.”

3. Ground No.3 is not pressed, hence dismissed as not pressed.
4. As regards Ground No.1 i.e. disallowance of project pending capitalization written off expenses amounting to Rs.7,71,40,000/- and treating these expenses to be of capital nature, during the relevant assessment year, the assessee company has written off project expenses on a projects that had to be abandoned. The assessee company was incorporated under the Companies Act, 1956 on 24th December, 1979 to establish and carry on business of construction & managing of hotels, restaurants, entertainment areas, amusement rooms or parks, refreshment rooms, tea rooms, cafes, milk and snack bars, and as caterers, contractors and managing properties as third party operators. The assessee had decided not to proceed with the projects in Coimbatore, Jaipur, Nagpur, Navi Mumbai and Ananda Phase II on account of high cost of borrowing funds for the purpose of the business because of which the projects were not viable. Out of the total expense of Rs. 4,530.21 (in Lacs) on account of 'Project Pending capitalization', the assessee capitalized expenses, including the cost of land amounting to Rs.3,819.07 (lacs) and only expenses amounting to Rs.771.40 (Rs.7,71,40,000/-), which were of the nature of consultancy fees, contractor payments and other expenses which could not be capitalized and were written off. Assessee plea is thus the amount of expenses written off

incorporates approximately 17% (771.40/4530.21) of the total amount under the head 'Project Pending Capitalization' and the balance has already been capitalised. The assessee had proposed to set up new hotels at Coimbatore, Mumbai, Nagpur and Jaipur. Land was acquired for the same purpose, but before the hotels (unit) could be constructed the projects had to be abandoned. Consequently, nominal consultancy, contractor payments and expenditure attributable to projects were written off and the balance expenses namely cost of land, site development expenses, part consultancy, contractor payments and expenditure attributable to projects were capitalised. Further, it is submitted that no new asset in commercial terms came into existence and therefore project expenses written off should be allowed as business expenditure.

4.1 The AO observed that the issue of capital vs. revenue expenditure has been examined and discussed in the decision by Hon'ble Delhi high Court in the case of Triveni Engineering Works Ltd. vs. CIT 232 ITR 639 (Del). The AO further held that the facts of the present case are different than the case law relied upon by the assessee that is M/s. Indo Rama Synthetics (I) Ltd. vs. CIT 333 ITR 18. In that case, the project could not see the light of the day since the assessee company could not procure the allotment of the requisite land from the government. However, in the present case, the assessee could procure the land for all the projects as per the details of "project work in the progress'.

4.2 Further, the AO commented in the assessment order that the assessee has itself been showing expenditure incurred on these projects as "Capital Work in Progress" till 31.03.2013. During the F.Y. 2013-14, the assessee decided not to proceed with these projects and accordingly the land cost has been transferred to the fixed assets schedule. The ratio of the decision of Hon'ble Delhi High Court in the case of M/s. Triveni Engineering Works Ltd. Vs. CIT, as per the AO, is clearly applicable in this case, because the expenditure was incurred with a view to bring new assets into existence and the assessee itself was showing the cost incurred till 31.03.2013 as capital works in progress. AO held that merely because in the F.Y. 2013-14 the assessee company decided not to proceed with the projects, the nature of the expenditure would not change from capital to revenue.

4. Upon assessee's appeal, Id. CIT (A) confirmed the addition.

5. Ld. Counsel for the assessee elaborately disputed the order of Id. CIT (A). He submitted that out of total expenses of Rs. 4,530.21 lakhs on account of "Project Pending Capitalization", the assessee company has capitalized expenses, including cost of land amounting to Rs.3,819.07 lakhs and only expenses amounting to Rs. 771.40 , which were in the nature of consultancy fees, contractor payments and other expenses which could not be capitalized were written off i.e. only 17% of total expenses were written off. He submitted that the proposed units were not an individual business

but an expansion of the present business. He further submitted that there was a commonality of administration and common fund. He pleaded that since the project was abandoned no new asset came into existence. The above view was supported by following case laws:-

- (i) CIT Vs Priya Village Roadshows Ltd. [2009] 185 Taxman 44 (Delhi)
- (ii) CIT vs. DCM Ltd. [2009] 179 Taxman 295 (Delhi)
- (iii) CIT Vs SRF Ltd. [2015] 59 taxmann.com 180 (Delhi)
- (iv) Jay Engineering Works Ltd. Vs CIT [2008] 166 Taxman 115 (Delhi)
- (v) Chemplast Sanmar Ltd. Vs ACIT [2018] 97 taxmann.com 347 (Madras)
- (vi) ITO Vs Blue Coast Infrastructure Development Ltd. [2021] 131 taxmann.com 282 (Chandigarh - Trib.)

He pleaded that the orders of the authorities below may be set aside and the addition be deleted.

6. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

7. Upon careful consideration, we find considerable cogency in the submission of the counsel for the assessee. We find that expenses Rs. 4,530.21 lakhs on account of "Project Pending Capitalization", the assessee company has capitalized expenses, including cost of land amounting to Rs.3,819.07 lakhs and only expenses amounting to Rs. 771.40 , which were in the nature of consultancy fees, contractor payments and other expenses which could not be capitalized were written off i.e. only 17% of total

expenses were written off. We further find that the proposed units were not an individual business but an expansion of the present business and there was a commonality of administration and common fund.

7.1 We find support from the judgment of Hon'ble Delhi High Court in the case of CIT Vs SRF Ltd. 2015] 59 taxmann.com 180 (Delhi), relied upon by the assessee, wherein Hon'ble High Court held as under :-

“Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Business expansion expenses) - Assessee was engaged in manufacturing of nylon tyre cord fabrics, packaging film, fluorochemicals, chloromethane and refrigerant gases - During current year, assessee expanded its business and claimed expenses as pre-capitalisation costs - Assessing Officer treated it as capital expenditure - Commissioner(Appeals) also confirmed findings of Assessing Officer - Tribunal after considering existing business and expansion, held that there was an element of interlacing before new venture and existing venture, and consequently, expenses had to be treated as revenue expenditure - Whether in view of judgment in Jay Engg. Works Ltd. v. CIT [2009] 311 ITR 405/[2008] 166 Taxman 115 (Delhi), pre-capitalisation expenses would be treated as revenue expenditure - Held, yes [Para 5] [In favour of assessee]

7.2 Examining the present case on the touchstone of above case laws, we find that assessee deserves to succeed. Hence, we set aside the orders of the authorities below and decide this issue in favour of the assessee.

8. As regards ground no.2 i.e. disallowing interest of Rs.5,40,62,940/- u/s 36(1)(iii), at the outset, ld. Counsel for the assessee submitted that this issue is covered by the decision of ITAT in the assessee's own case in ITA No.4991/Del/2018 in AY 2015-16 vide order dated 22.11.2021.

9. Upon careful consideration, we find that this issue is covered by the aforesaid decision of ITAT in assessee's own case. We may gainfully refer to the decision of the ITAT as under :-

“9. The fact shows that assessee is engaged in the business of hospitality. It entered into a memorandum of agreement with Govt. of Andhra Pradesh for setting up hospitality business in Hyderabad. A special purpose vehicle was formed in the name of IIHR Hospitality (Andhra) Pvt Ltd. Andharpradesh Govt Allotted land to the assessee and in lieu of that share capital was issued. The assessee has given advance to the subsidiary company as on 31.03.2014 of Rs. 51.54 crores which gone up to Rs. 71.07 crores as on 31.03.2015. The assessee company has not charged any interest on loan to its subsidiary, however, it has paid interest of Rs. 33,54,98,000/- on borrowed funds. The fact shows that the assessee company entered into a joint venture agreement that the Andhra Pradesh Govt in 2005 and incorporated a special purpose vehicle to which advances were given for a hotel at Hyderabad. The govt of Andhra Pradesh provided a land of 14.94 acres at Hyderabad and got share in the above company. The assessee company raised its share capital and put money into subsidiary company as interest free unsecured loans due to equity cap of 26% in favour of Andhra Pradesh Govt. The assessee company received share capital of Rs. 75 crores out of which 22.65 crores was given to the subsidiary company. On looking at the balance sheet of the assessee company it is placed at page No. 80 of the paper book, assessee has share capital and reserve and surplus of Rs. 32,791 lakhs and has advance Rs.7101 lakhs to its subsidiary company as on 31.03.2015. Therefore, even on the simple matrix it is apparent that the assessee has huge interest free funds available with it in the form of share capital and reserve and surplus which is more than the amount of interest free loan to the subsidiary company. Thus there cannot be any disallowance u/s 36(1)(iii) of the Act. Therefore, the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in case of Reliance Industries Ltd 102 Taxmann.com 52 (SC). Even otherwise the assessee has shown that it has given a loan to its subsidiary company in terms of memorandum agreement entered into with Andhra Pradesh Govt. for setting up hotel at Hyderabad. The business of the assessee as well as its subsidiary are also exactly same i.e. hospitality business. Thus the advances are also driven by business exigency.

10. The assessee submitted that the issue is squarely covers in favour of the assessee by the decision of the Hon'ble Bombay High Court in Pr CIT Vs. ECT Investment Holdings Pvt. Ltd 117 Taxmann.com 123 wherein, the claim of the assessee was allowed.

11. Hon Delhi High court in Principal Commissioner of Income Tax v. Gaursons Realty (P.) Ltd.* [2020] 120 taxmann.com 259 (Delhi) has held that Where assessee, real estate company, had advanced loan to sister company for purpose of acquisition of land and to acquire a controlling

stake in sister concern which was also engaged in real estate business, deduction claimed by assessee under section 36(1)(iii) could not be disallowed on account of said advance of loan.

12. Honourable Delhi high court in Principal Commissioner of Income-tax v. Reebok India Company [2018] 98 taxmann.com 413 (Delhi) where in it has been held that Money borrowed by assessee even when advanced to its subsidiary for some business purpose would qualify for deduction of interest paid on such borrowings

13. In view of above facts were direct the ld AO to delete the disallowances of interest expenditure on two counts.

- i. The assessee has interest free advance available with it more than the amount of interest free advance given
- ii. The subsidiary and the assessee are engaged in the same business, the assessee entered into joint venture agreement for setting up hotel at Hyderabad therefore, there is a business exigencies shows by the assessee.

Accordingly, we allow ground No. 1 of the appeal.”

Since the facts in the assessee’s own case for the aforesaid assessment year case are similar to the present assessment year, following the aforesaid coordinate Bench, we delete the addition and allow this ground.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 4th day of June, 2024.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 4th day of June, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-35, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**