

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "A" BENCH : PUNE :

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI GD PADMAHSHALI, , ACCOUNTANT MEMBER

I.T.A.No.437/PUN./2023 [E-APPEAL]  
Assessment Year 2018-2019

M/s. Classic Citi Investments Pvt. Ltd., 36/3B, The Westin Hotel, Koregaon Park, Annexe Mundhwa Road, Ghorpadi, Pune – 411 001. Maharashtra PAN AABCC7550P	vs.	The DCIT, Circle-1(1), PMT Bldg., Swargate, Pune – 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Sanket M. Joshi
For Revenue :	Shri Keyur Patel, CIT-DR

Date of Hearing :	29.05.2024
Date of Pronouncement :	04.06.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This assessee's appeal for assessment years 2018-2019, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2022-23/1050489630(1), dated 07.03.2023, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

*“On facts and in law –*

*1. The Ld CIT (A) erred in confirming the addition of Rs.6,88,79,274/- made by the Ld AO in the income of the appellant without considering the fact that in none of the notices issued to the appellant u/s 142(1) of the Income Tax Act, the Ld AO had questioned the cost of acquisition of land of Rs.12,58,25,274/-. The CIT (A) erred in not considering the fact that Ld AO did not provide the opportunity of being heard before suo moto replacing the cost of acquisition of land to Rs.10,55,27,112/-.*

*The appellant prays before Your Honor to direct the Ld AO to delete the addition of Rs.6,88,79,274/- made in the income of the appellant.*

*2. The appellant submits that it had recorded the cost of acquisition of land as Rs.12,58,25,274/- since its acquisition in the year 2001 and the same was accepted in all the subsequent assessment proceedings completed till the assessment year 2018-19. Accordingly, replacing the cost of acquisition of Rs.12,58,25,274/- by Ld AO on his own to Rs.10,55,27,112/- without giving any opportunity of being heard to the appellant is not justifiable.*

*3. The Ld. CIT(A) erred in confirming the disallowance u/s 32 on account of depreciation of Rs.1,10,10,958/- on the fixed assets without appreciating the facts of the case submitted*

*by the appellant during the assessment and appellate proceedings.*

*The appellant prays before Your Honor to kindly direct the Id AO to delete the reallowance of Rs. 1,10,10,958/- u/s 32 of the Income tax Act, 1961.*

*4. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. We advert to the first and foremost issue of disallowance/addition of cost of acquisition of the assessee's capital asset amounting to Rs.6,88,79,274/- made in the course of assessment herein dated 16.04.2021 as upheld in learned NFAC's order. It emerges at the outset from perusal of the assessment discussion in para-2 pages 5 to 6 of the assessment herein that the Assessing Officer had sought assessee's explanation regarding cost of the relevant capital asset/hotel's land and building, acquired on 19.08.2002 by filing the necessary evidence. There is hardly any dispute that the said details could not be furnished at the assessee's behest which resulted in the impugned disallowance/addition. The very factual position appears to have continued before the NFAC as it is evident from paragraph-5.1 in the lower appellate discussion.

4. Learned counsel at this stage invited our attention to the assessee's application dated 30<sup>th</sup> November, 2023 seeking

permission to file additional evidence by way of paper book running into 35 pages and more particularly; copy of the sale certificate dated 13.11.2002 after completion of the relevant auction wherein it had emerged as the successful bidder in acquiring the hotel building in question.

5. Learned DR vehemently contested the assessee's instant application seeking admission of additional evidence on the ground that it has been adopting mutually contradictory stands all along and therefore, it is not entitled for the impugned relief.

6. Faced with this situation, we are of the considered view that there is no denial coming from the Revenue side in light of Rule-29 of Appellate Tribunal Rules, 1962 that the foregoing additional evidence indeed goes to the root of the matter so far as the impugned disallowance of Rs.6,88,79,274/- is concerned. We accordingly admit the same in very terms and restore the assessee's instant first and foremost substantive ground back to the learned Assessing Officer for his afresh factual verification and necessary adjudication preferably within three effective opportunities of hearing subject to the rider that it is the assessee's sole risk and responsibility to prove the case in consequential proceedings. The assessee's instant former substantive grounds is accepted for statistical purposes.

7. Next comes the latter issue of depreciation disallowance amounting to Rs.1,10,10,958/- made in both lower proceedings. Both the learned representatives are indeed *ad idem* during the course of hearing that the same is a recurring issue in light of this tribunal's earlier orders in its own case for assessment years 2010-11, 2012-13, 2013-14 and 2014-15 [common adjudication] dated 24.05.2023; dated 07.07.2022 in assessment year 2011-12; dated 12.09.2023 in assessment year 2015-16 and dated 21.09.2023 for assessment years 2016-17 and 2017-18; respectively. All these learned coordinate bench(es) appear to have restored this latter issue of depreciation back to the Assessing Officer for his appropriate adjudication. That being the case, we adopt judicial consistency and restore the assessee's instant latter substantive ground back to the learned assessing authority for its afresh appropriate adjudication as per law in light of this tribunal's earlier findings in foregoing assessment years, preferably within three effective opportunities of hearing subject to the rider that it is the assessee's sole risk and responsibility to prove the case in consequential proceedings. Ordered accordingly.

8. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 04.06.2024.

Sd/-  
[GD PADMAHSHALI]  
ACCOUNTANT MEMBER

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 04<sup>th</sup> June, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned.
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.