

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.274/Bang/2024
Assessment Year : 2012-13

M/s. Hyagreeva Hotels and Resorts Pvt. Ltd., No.10/6, Lavelle Road, Bengaluru – 560 001. PAN : AAACH 7551 A	Vs.	JCIT (OSD), Circle – 3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Akshita, CA
Revenue by	:	Shri. Ramanathan, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.06.2024
Date of Pronouncement	:	12.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 20.12.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2012-13.

2. Brief facts of the case are as follows:

The AO passed rectification order under section 154 of the Act (Order dated 04.03.2022) by denying the set off of losses amounting to Rs.22,43,078/- carried forward from Assessment Year 2010-11.

3. Aggrieved by the Order of the AO passed under section 154 of the Act, assessee preferred appeal before the First Appellate Authority. The CIT(A) confirmed the view taken by the AO. The relevant finding of the CIT(A) reads as follows:

“I have carefully considered the submissions made by the Appellant. It is observed that the Appellant filed ROI for A.Y.: 2012-13 on 29.09.2012 declaring income of Rs.26,25,040/- and assessment u/s. 143(3)/147 was completed on 05.07.2019 by making an addition of Rs.40,78,369/- The Appellant had set off brought forward loss of Rs.47,50,660/- against the business income of Rs.73,75,700/- and declared Rs.26,25,040/- as taxable income for A.Y.: 2012-13. It is further observed that in the A.Y.: 2011-12, the AO had completed re-opening proceedings by disallowing interest expenditure of Rs.1,08,30,193/- limiting the loss of Rs.25,07,582/-. Against this order, the Appellant approached the CIT(A) who passed an ex-parte order and the Appellant preferred appeal before the Hon'ble ITAT. The Hon'ble ITAT remanded the matter back to the CIT(A) for fresh consideration. The AO vide his order dated 04.03.2022 held that business loss of Rs. 25,07,582/- pertaining to A.Y.: 2010-11 was only available for set off against Rs.73,75,700/- and disallowed brought forward loss of Rs.22,43,078/-, The position as it stands as on date is that vide order u/s. 143(3)/147 for the A.Y.: 2011-12, the loss has been determined at Rs.25,07,582/- due to the disallowance of interest expenditure of Rs.1,08,30,193/-. Until and unless the addition is deleted by the Appellate authorities, this position holds and Appellant cannot cling on to a higher figure simply by stating that the matter is sub judice. The contention of the Appellant that this is not a mistake apparent from record also does not hold water. Carry forward of loss and set off of loss are apparent from records and no debatable issues are involved here.

In view of the above, the AO was justified in disallowing brought forward loss of Rs.22,43,078/- and these grounds are dismissed.

In the result, the Appeal is dismissed.”

4. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal raising the following effective grounds:

“III The learned CIT(A) erred in upholding the order under section 154 of the Act by denying set-off of losses amounting to Rs.22,43,078/- carried forward from the Assessment Year 2010-11, thereby further enhancing the income assessed during the reassessment proceedings u/s 143(3) r.w.s 147 (not appealed by the Assessee) from Rs. 67,03,412/- to Rs. 89,46,490/-. The denial of set off was without considering the fact that in the proceedings for AY 2010-11 the Learned AO has completed the reassessment proceedings u/s 143(3) r.w.s 147 of the Act by disallowing interest expenditure of Rs.1,08,30,193/- and thereby limiting the carry forward of loss from Rs. 1,33,37,775/- to Rs. 25,07,582/-.

IV The learned CIT(A) has failed to appreciate the reduction in assessed carried forward business loss for AY 2010-11 from Rs.1,33,37,775/- to Rs. 25,07,582/- was on account of disallowing interest expenditure paid to the bank which in itself is a debatable issue and has been appealed against before the CIT(A) and pending for disposal.

V The order is passed in haste, without considering the impending appeal before the Learned CIT(A) for AY 2010-11 and without providing sufficient and reasonable opportunity of being heard.”

5. The learned AR, relying on the above grounds, submitted that the loss determined for Assessment Year 2010-11 is pending adjudication before the CIT(A). It was contended that the determination of income for relevant Assessment Year will be directly impacted by Order of the CIT(A) for the Assessment Yer 2010-11. Therefore, it was prayed that the issue raised in the relevant Assessment Year also needs to be restored to the files of the CIT(A).

6. The learned DR was duly heard.

7. We have heard the rival submissions and perused the material on record. The AO in Order passed under section 154 of the Act had denied the set off of losses amounting to Rs.22,43,078/- carried forward from Assessment Year 2010-11 thereby further enhancing the assessed income for the relevant Assessment Year. We find that carry forward of business loss for Assessment

Year 2010-11 was reduced from Rs.1,33,37,775/- to Rs.25,07,582/- on account of disallowance of interest expenditure which is pending adjudication before the CIT(A). Therefore, the issue of carry forward of business loss for the relevant year from the Assessment Year 2010-11 needs to be adjudicated altogether. For the aforesaid purposes, the issue raised in this appeal is restored to the files of the CIT(A). It is ordered accordingly.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 12.06.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.