आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Mahavir Singh, Hon'ble Vice-President and
Shri Manjunatha, G. Accountant Hon'ble Accountant Member

आ.अपी.सं /**ITA No.165/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Dolphin Hotels (P) Ltd ANAJPUR PAN:AAACD7740B	Vs.	Dy. C. I. T. Circle 5(1) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं /**ITA No.204/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Asstt. C. I. T. Circle 5(1) Hyderabad	**Vs.**	Dolphin Hotels (P) Ltd ANAJPUR PAN:AAACD7740B
(Appellant)		(Respondent)

निर्धारिती द्वारा/Assessee by:	Shri A.V. Raghuram, Advocate
राजस्व द्वारा/Revenue by::	Shri Srinath Sadanala, DR
सुनवाई की तारीख/Date of hearing:	26/09/2024
घोषणा की तारीख/Pronouncement:	25/10/2024

आदेश/ORDER

Per Manjunatha, G. A.M

These cross appeals filed by the assessee as well as the Revenue are directed against the order dated 21.12.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19. Since facts are identical and issues raised in both the appeals are corelated

with each other, for the sake of convenience, these were heard together and are being disposed off, by this common order.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of hospitality industry, operating hotels by the name of Dolphin at Visakhapatnam, 'Sitara', 'Tara' and 'Sahara' etc. in Ramoji Film City (RFC), Hayathnagar Mandal, Ranga Reddy District. The appellant has filed its return of income for the A.Y 2018-19 on 30/10/2018 declaring income at Rs.23,85,74,480/-. The assessment has been completed u/s 143(3) of the I.T. Act, 1961 on 22/03/2021 and determined the total income at Rs.28,09,26,044/- by inter alia making additions towards disallowance of 50% of site seeing expenses, addition on account of disallowance of royalty expenses and addition on account of excess deduction claimed under the head "any other amount allowable" as deduction.

3. On appeal, the learned CIT (A) partly allowed the appeal, where the learned CIT (A) deleted the disallowance of site seeing expenses, however, restricted disallowance of royalty paid to Ramoji Rao (HUF) to 0.4% of the turnover as against 100% disallowances made by the Assessing Officer. The learned CIT (A) had also confirmed the additions towards excess deduction claimed under any other amount allowable as deduction in schedule BP.

4. Aggrieved by the order of the learned CIT (A), both the assessee as well as the Revenue are in appeal before the Tribunal.

5. The first issue that came up for our consideration from Ground of appeal No.2 of assessee's appeal and Ground No.1 of Revenue's appeal is disallowance of royalty expenses. The fact with regard to the impugned dispute are that, the appellant is a group entity of Ramoji Film City and operates within the premises of RFC. The appellant has paid royalty of Rs.1,45,30,900/- to Shri Ramoji Rao (HUF) as per agreement with the parties @1% of total revenue. The appellant justified payment of royalty on the ground that, the brand name Ramoji was owned by Ramoji Rao (HUF) who has built the group with diversified interest and as per the agreement between the appellant company and the brand owner, the appellant has used brand name in its business which resulted in direct benefit in the form of enhanced sales. The Assessing Officer disallowed the entire amount of royalty payment on the ground that, because of familiarity of Ramoji Rao in the business, the benefit to any of the group companies comes automatically, whether they used brand name or not, therefore, opined that royalty payment for using brand name Ramoji is excessive and unreasonable, and thus, made addition towards entire Royalty paid u/s 40A(2)(b) of the I.T. Act, 1961. On appeal, the learned CIT (A) admitted the fact that the assessee has derived benefit from using brand name, however, opined that the payment is

excessive and unreasonable and thus, restricted royalty payment to 0.4% of the total turnover.

6. The learned Counsel for the assessee submitted that the learned CIT (A) having accepted the fact that the appellant is having direct benefit from the brand name Ramoji is erred in restricting said payment to 0.4% of the total revenue without appreciating the fact that as per the agreement between the parties, the brand name owner is entitled for royalty of 1% of total revenue for using brand name in their business. The learned Counsel further referring to various facts submitted that the Assessing Officer and the learned CIT (A) never disputed the fact that the brand name Ramoji is very familiar in Telugu States and because of its diversified business and the name commands great value in the public. Further, the appellant has achieved higher turnover for the impugned A.Y when compared to earlier financial year because of brand name. Therefore, he submitted that the entire amount of royalty payment should be allowed as business expenditure.

7. The learned DR, on the other hand, supporting the order of the Assessing Officer submitted that the Assessing Officer has given clear reasons why royalty payment cannot be allowed as deduction. Further, as claimed by the assessee itself, the benefit is automatic because of familiarity of brand name in business circle and public. The learned CIT (A) having noticed the fact that

even otherwise, the appellant is getting automatic benefit but directed the Assessing Officer to restrict the royalty payment to 0.4% total turnover. Therefore, he submitted that the order of the learned CIT (A) should be set aside and the addition made by the Assessing Officer should be sustained.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the trade mark "Ramoji" is owned by Shri Ramoji Rao (HUF). As per the agreement between Shri Ramoji Rao (HUF), the trade mark license holder and the appellant, the appellant required to pay 1% royalty on business turnover for using the brand name in their business. The Assessing Officer never disputed the fact that Ramoji brand name commands respect in business circle and public especially in the States of Telangana and Andhra Pradesh. Therefore, in our considered view, once the appellant paying royalty as per agreement between the parties and further said brand name is owned by a person with a registered trade mark, in our considered view, the Assessing Officer and the learned CIT (A) are erred in disallowing royalty payment by invoking the provisions of section 40A(2)(b) of the I.T. Act, 1961 without bringing on record any comparable case of similar nature or how royalty payment is excessive and unreasonable. We further note that the appellant has got direct benefit from using brand name which is evident from substantial increase in turnover when compared with the

impugned A.Y to earlier financial year. Thus, in our considered view, the royalty payment for using brand name is a business expenditure and allowable u/s 37(1) of the I.T. Act, 1961. The learned CIT (A) without appreciating the relevant facts simply restricted royalty payment to adhoc 0.4% of the total turnover. Thus, we set aside the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards disallowance of royalty payment u/s 40A(2)(b)(of the I.T. Act, 1961.

9. The next issue that came up for our consideration from Ground of appeal No.2 of Revenue's appeal is deletion of adhoc 50% addition made towards site seeing expenses amounting to Rs.1,91,68,225/-. The brief facts of the impugned dispute are that the assessee has claimed an amount of Rs.3,83,36,451/- as site seeing expenses. Before the Assessing Officer, the assessee explained the nature of expenses and how the payment has been made to Usha Kiran Movies (P) Ltd (UKMPL). According to the assessee, the appellant manages 3 hotels in RFC and facilitates site seeing to its customers who visits RFC. The appellant collects site seeing charges as per the tariff fixed by the RFC and makes payment to UKMPL for arranging site seeing to its customers. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, site seeing expenses paid to UKMPL for RFC entry fees is not an allowable

expenditure because as per the matching concept of accounting, only expenditure relatable to income can be allowed as deduction. Therefore, going by the Auditor's Report itself, it is very clear that the appellant has not provided fair and rationale reasons for justifying payment to related parties. Therefore, disallowed 50% of site seeing expenses and added back to the total income.

10. The learned DR submitted that the learned CIT (A) erred in deleting disallowance of site seeing expenses without appreciating the fact that the appellant has debited expenditure towards site seeing expenses, whereas there is no revenue towards collections from the customers. The learned DR further submitted that the Assessing Officer has given clear reasons as to why site seeing expenses is not allowable as deduction. However, the learned CIT (A) without any reason deleted the addition made by the Assessing Officer. Therefore, he submitted that the addition made by the Assessing Officer should be sustained.

11. The learned Counsel for the assessee, on the other hand, supporting the order of the learned CIT (A) submitted that the appellant company runs 3 hotels in RFC. Further, the appellant company takes booking from its customers for site seeing in RFC as per tariff fixed by the RFC and directly makes payment to UKMPL who is the owner of RFC. The appellant does not keep any mark-up on entry fee collected from customers. The entire fee collected from customers has been included in hotel

bills and credited into the revenue account. The amount paid to UKMPL has been debited under the head event expenses. The learned CIT (A) after considering the relevant facts has rightly deleted the additions made by the Assessing Officer and their order should be upheld.

12. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The appellant collects entry fee for visiting RFC from its customers as per tariff fixed by the RFC. For the financial year 2017-18 relevant to A.Y 2018-19, the appellant has collected entry fee of Rs.3,83,36,451/- from its customers and paid the entire amount to UKMPL. The appellant has credited the amount collected from customers to its income account and debited the entire fees paid to UKMPL under the head site seeing expenses. In other words, the appellant acts only an agent on behalf of RFC for collecting entry fees from the customers residing in their hotel and the total amount has been paid to UKMPL without any mark-up. From the business model of the assessee, it appears that the amount collected from customers and paid to RFC is in the nature of reimbursement to other parties and thus, in our considered view, the question of application of provisions of section 40A(2)(b) does not arise. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learned CIT (A) and reject the ground taken by the Revenue.

13. The next issue that came up for our consideration from Ground of appeal No.3 of assessee's appeal is addition on account of deduction claimed towards any other amount allowable as deduction in schedule BP for Rs.81,939/-. The appellant makes provisions for doubtful debt to P&L Account in their books of account. However, while computing income under the head "business or profession" add back provisions of bad and doubtful account in respective A.Ys. The appellant had also credited recovery from bad debts written off account and credits to P&L Account. Since the provision for bad and doubtful debt has been added back to the total income, the recovery out of said bad debt written off and credited to P&L Account has been excluded from total income. During the financial year relevant to A.Y 2018-19, the appellant has recovered Rs.24,08,691/- towards the write off of bad debts reported under the head deduction under any other amount allowable in schedule BP. The Assessing Officer noticed that the assessee has debited an amount of Rs.23,26,752/- for the A.Y 2017-18, whereas allowed deduction for Rs.24,08,691/-. Therefore, the different amount of Rs.81,939/- has been added back to the total income.

14. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the method of accounting followed by the assessee for giving treatment to provision for bad and doubtful debts in the books of account and

in the computation of statement of total income. The dispute is only with regard to the provisions for bad and doubtful debts and amount recovered out of said provision for bad and doubtful debts for the A.Y 2017-18. The Assessing Officer under wrong facts observed that the assessee has debited an amount of Rs.23,26,752/-, whereas claimed for deduction at Rs.24,08,691/- for A.Y 2017-18. We find that the Assessing Officer has grossly erred in observing that there is a difference on the provision for bad and doubtful debt added back in statement of total income and credited to P&L Account and also amount excluded from total income, because the assessee has debited an amount of Rs.21,03,697/- for A.Y 2016-17 and Rs.23,26,751/- for A.Y 2017-18. Out of the said bad debts written off, the appellant has recovered sum of Rs.3,66,282/- for A.Y 2016-17 and Rs.20,42,409/- out of bad debts written off for A.Y 2017-18. The Assessing Officer without appreciating the above fact simply compared the amount debited for A.Y 2017-18 and amount recovered for the A.Y 2017-18 ignoring the recovery out of bad debts written off in the books and added back to the total income and amount realized out of written back amount and credited to P&L Account for the A.Y 2016-17. If you consider two years, the amount debited is more than the amount of recovery. In any way, going by the method of accounting followed by the assessee itself, it is a tax neutrality because whatever may be the treatment in the books, the assessee added back the provision for bad debts in the statement of total income and reduced the recovery out of said

bad debts in the statement of total income. Therefore, we are of the considered view that the Assessing Officer is erred in making addition of Rs.81,839/- out of the amount claimed as deduction under schedule BP. The learned CIT (A) without appreciating the relevant facts simply sustained the addition made by the Assessing Officer. Thus, we set aside the findings of the learned CIT (A) on this issue and direct the Assessing Officer to delete the addition made towards disallowance in other deductions claimed under schedule BP.

15. In the result, appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 25th October, 2024.

Sd/-	Sd/-
(MAHAVIR SINGH) **VICE-PRESIDENT**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 25th October, 2024
Vinodan/sps

opy to:

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2	Dolphin Hotels P Ltd, Hotel Sitara, Ramoji Film City, Hayatnagar Mandal, Ranga Reddy 501512
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

1.	Draft dictated on	30/09/2024	
2.	Draft placed before author	1/10/2024	
3	Approved Draft comes to the Sr.P.S./PS		
4.	Kept for pronouncement on		
5.	File sent to the Bench Clerk		
6.	Date on which file goes to the Head Clerk		
7.	Date of Dispatch of order		