

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 913/MUM/2024
(Assessment Year: 2017-18)**

**ITA No. 894/MUM/2024
(Assessment Year: 2018-19)**

Kamat Hotels (India) Limited

KHIL House, 70 C Nehru Road, Vile Parle East,
Mumbai – 400 099 Maharashtra
[PAN: AAACK2912L]

..... **Appellant**

Vs

Assistance Commissioner of Income Tax, Mumbai

Room No.651, 6th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai-400 020, Maharashtra

..... **Respondent**

**ITA No.1483/MUM/2024
(Assessment Year: 2017-18)**

Assistance Commissioner of Income Tax, Mumbai

Room No.651, 6th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai-400 020, Maharashtra

..... **Appellant**

Vs

Kamat Hotels (India) Limited

KHIL House, 70 C Nehru Road, Vile Parle East, Mumbai
– 400 099. Maharashtra
[PAN: AAACK2912L]

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Dharmesh Shah
For the Respondent/Department : Shri Biswanath Das

Date

Conclusion of hearing : 22.08.2024
Pronouncement of order : 04.11.2024

ORDER

Per Bench:

1. This a batch of 3 appeals consisting of cross-appeals for the Assessment Year 2017-2018 and appeal preferred by the

Assessee for the Assessment Year 2018-2019. Since the appeals involved common issues the same were heard together and are being disposed off by way of a common order.

We would first take up appeals for the Assessment Year 2017-18.

Assessment Year 2017-18

Appeal By Assessee : ITA No. 913/Mum/2024 & Appeal By Revenue : ITA No. 1483/Mum/2024

2. By way of the present cross-appeals the Assessee as well as Revenue has challenged the order, dated 08/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] whereby the Ld. CIT(A) had partly allowed the appeal preferred by the Assessee against the Assessment Order, dated 30/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**']. In the aforesaid appeal, the Assessee has filed cross objections.

ITA No.913/Mum/2024

3. The Assessee has raised following grounds of appeal:-

I. DISALLOWANCE UNDER SECTION 36(1)(iii)

- a. *Learned CIT(A) erred in disallowing Rs. 24,37,53,214/- being interest under section 36(1)(iii) of the Act both on facts and in law.*
- b. *On the facts and circumstances of the case and in law, Learned CIT(A) erred invoking the provisions of Section 36(1)(iii) of the Act to disallow the following amounts out of interest expenditure by holding that the advancing of interest free loan to 100% subsidiaries did not fall within the meaning of "for the purpose of the business" in Section 36 (1)(iii) of the Act*

- (1) *Rs. 24,26,33,040/- proportionate interest relatable to alleged interest free loan given to My Orchid Hotels Pune Private Limited; (OHPPL)*

- (2) *Rs. 11.20.175/- proportionate interest relatable to alleged interest free loan given to M/s Mahodadhi Palace Private Ltd. (MPPL)*
- c. *Learned CIT (A) erred in failing to appreciate that the loans were given to the said two 100% subsidiaries (OHPPL and MPPL) on the consideration of business exigencies on interest at prevailing rates and advancing of such loans was definitely for the purpose of the appellant's business, i.e. furtherance of hotel business of the 100% subsidiaries (OHPPL and MPPL) which is the business of the appellate too, within the meaning of Section 36(1)(iii) of the Act.*
- d. *Learned CIT(A) erred in failing to appreciate that the loans were given to 100% subsidiaries (OHPPL and MPPL) by the appellant in earlier years (FY 2008-2009 and 2014-2015) out of mixed funds available with the appellant and the appellant's net owned funds at the time of giving these loans were in excess of loan amounts and as such there was no justification for invoking the provisions of Section 36(1)(iii) of the Act. Learned CIT(A) further erred in not appreciating that under the law, in a case when loan is given out of mixed funds and the net owned funds of the assessee are more than the borrowed funds, it is reasonable to presume that the loan was given out of own funds.*
- e. *Learned CIT(A) erred in failing to appreciate that the appellant had already disallowed an amount of Rs,17,18,48,839/- out of the interest expenditure of Rs.18,59,45,358/- debited to the Profit and Loss account and actual claim of interest amount was only Rs.1,40,93,519/- and disallowance of Rs.24,37,53,213.- out of Rs.1,40,93,519/- was not only incorrect but unreasonable, excessive and not warranted."*

ITA No.1483/Mum/2024

4. The Revenue has raised following grounds of appeal:

- "1. *"Whether in the facts and circumstances of the case the Ld. CIT(A) was right in deeding this issue relying on the Remand Report even though it was established beyond doubt that the JAO has repeatedly requested for providing the specific issue on which Remand Report is required and the necessary a fresh supporting documentary evidence furnished by the appellant to take a rational and judicious finding as a part of Remand Report, which was not provided by the Ld. CIT(A) is also pertinent to mention that the Ld. CIT(A) issued repeated reminders to submit the Remand Report as*

evident from the records on the ITBA

2. *Whether in the facts and circumstances the Ld.CIT(A) erred by not looking into the issue of reconciliation of the total cash deposits (Rs.102.64 crore) reported in the AIR with the amount of addition made on the basis of the cash deposits (Rs.43.19crore) while deciding the issue. The order of the Ld. CIT(A) does not mention about reconciliation of the total amount of cash deposited during the FY. 2016-17 and the amount of cash deposit made during period from 09.11.2016 to 30.12.2016 by the assessee"*
 3. *Whether in the facts and circumstances the Ld.CIT(A) was right in deciding the issue without looking into larger issue of reconciliation of the amounts actually deposited and reflected in the AIR for F.Y. 2016-17. It is pertinent to mention here that the reconciliation was neither the mandate for Remand Report nor it found any mention in the Remand Report*
 4. *Whether in the facts and circumstances the Ld. CIT(A) was right in holding that the cash deposits added in the assessment order was over and above the turnover reported by the appellant, and has not given any finding not has analyzed and justified this in the appellate order and is merely like a comment without any explanation*
 5. *Whether in the facts and circumstances the Ld. CIT(A) was right in deleting the addition without giving proper reasoning and reconciliation of the cash deposits and as a consequence, the issue of unexplained cash deposit of Rs 43,19,29,45.3/- for the entire year and for the period of demonetization remains to be property examined as a whole and proper verification and justification for the source of such cash deposits for the aforesaid period.*
 6. *The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal as above."*
5. The Assessee, a public listed limited company, filed return of income on 31/10/2017 declaring total income at 'Nil' under normal provisions of the Act after setting off unabsorbed depreciation and brought forward business losses of preceding years amounting to INR 22,13,95,674/-. In the return of income, the Book profits under Section 115JB of the Act were computed at INR.53,64,328/-

6. The case of the Assessee was selected for regular scrutiny. During the assessment proceedings the Assessee was asked to reconcile the AIR information relating to cash deposits made in the bank account of the Assessee with the books of accounts maintained by the Assessee. According to the Assessing Officer, the Assessee failed to provide necessary reconciliation and therefore, on the basis of entries found in the AIR Information Sheet, addition of INR.43,19,29,453/- was made in the hands of the Assessee under Section 68 of the Act in respect of alleged unexplained cash deposits made into the bank accounts during demonetization period. The Assessing Officer also made a disallowance of INR.24,37,53,214/- by invoking the provisions of Section 36(1)(iii) of the Act in respect of loans given to Orchid Hotels Pune Private Limited [for short **Orchid Hotels'**] and Mahodadhi Palace Private Limited [for short **MPPL'**], two wholly owned subsidiaries of the Assessee. According to the Assessing Officer the Assessee had failed to establish that interest bearing funds were used for the purpose of the business of the Assessee. According to the Assessing Officer, the interest bearing funds were diverted for non-business purposes to subsidiaries. Therefore, proportionate interest of INR 24,37,53,214/- [$INR.11,20,175/- + INR 24,26,33,040/-$] was disallowed under Section 36(1)(iii) of the Act computed as under:

- (a) Mahodhadhi Palace Pvt. Ltd : INR 11,20,175/-
 $INR 8,27,66,000 \times 12.35\% \text{ p.a} \times 40/365 \text{ days}$
[Proportionate interest cost for the period falling in previous year]
- (b) Orchids Hotel Pune Pvt Ltd INR 24,26,33,040/-
 $INR 196,46,39,996/- \times 12.35\% \text{ p.a.}$

Thus, vide Assessment Order, dated 30/12/2019, passed under Section 143(3) of the Act, the Assessing Officer made, inter alia, (a) Addition of INR.43,19,29,453/- on account of unexplained

cash deposits and (b) Disallowance of INR.24,37,53,214/- under Section 36(1)(iii) of the Act.

7. Being aggrieved, the Assessee preferred appeal before the CIT(A) challenging, inter alia, the above additions. Before the CIT(A) it was contended on behalf of the Appellant that the assessment was framed on the Assessee without granting proper opportunity of being heard. The information/documents furnished by the Assessee during the course of assessment proceedings were not taken into consideration by the Assessing Officer. The Appellant also filed additional documents along with application for admission of additional evidence. The CIT(A) called for a report in relation from the Assessing Officer in this regard. The submissions and supporting documents filed by the Assessee were forwarded to the Assessing Officer. Taking the same as additional evidence, the Assessing Officer carried out inquiry/verification. Notice were issued under Section 133(6) of the Act to banks for obtaining details of bank accounts maintained by the Assessee and in response to the same the banks provided bank account statements along with details/explanation. After examining the AIR Information, reply received from the banks, month-wise summary of cash deposits and other details provided by the Assessee, and the relevant bank account statements, the Assessing Officer gave a remand report, dated 30/01/2024, that (a) cash deposits were made only in five bank accounts – the information provided by the bank was incorrect; (b) the entries reported in the AIR/S.F.T were old entries, duplicate entries, time deposits etc.;(c) the ratio of cash deposits in demonitization months to total cash deposits during the year in 2015-2016, 2016-2017, and 2017-2018 was 16.9%, 7.5% and 16.36%, respectively (d) the cash deposited formed part of cash sales disclosed during the relevant previous year and (e) the addition made in respect of cash deposits was over and above the

aforesaid cash sales disclosed by the Assessee. After reporting as aforesaid, the Assessing Officer finally concluded that nothing contrary to the claim of the Assessee was found. Taking the remand report, dated 30/01/2024, sent by the Assessing Officer into consideration, the CIT(A) deleted the addition of INR.43,19,29,453/- made by the Assessing Officer under Section 68 of the Act on account of cash deposits. However, the CIT(A) agreed with the Assessing Officer and confirmed the disallowance of INR.24,26,33,040/- made under Section 36(1)(iii) of the Act on the ground that the Assessee had failed to establish commercial expediency in respect of loans granted to its wholly owned subsidiaries. Thus, the CIT(A) partly allowed appeal preferred by the Assessee vide order, dated 08/02/2024, which has been impugned by way of the present cross-appeals. The Assessee is aggrieved by the order of CIT(A) confirming the disallowance made by the Assessing Officer under Section 36(1)(iii) of the Act while Revenue is aggrieved by the deletion of addition made by the Assessing Officer under Section 68 of the Act.

8. We have heard both the sides, perused the material on record including remand report, dated 30/01/2024, sent by the ITO – 2(1)(3) to the Additional Commission of Income Tax, Range 2(1) on which reliance was placed by the Learned Departmental Representative as well as synopsis/submission filed by the Assessee before us.

ITA No.913/Mum/2024

9. We would first take grounds raised by the Assessee in ITA No. 913/Mum/2024. All the grounds are directed against the addition made by the Assessing Officer under Section 36(1)(iii) of the Act which was sustained by the CIT(A).
 - 9.1. We have given thoughtful consideration to the rival submissions.

The case set up by the Assessee is that it is admitted position that the funds were granted by the Assessee, engaged in hospitality business, to its 100% subsidiaries engaged in the same line of business. The funds were given to Orchid Hotels during previous years relevant to the Assessment Years 2011-2012 to 2013-2014, whereas the funds to MPPL were given during previous years relevant to the Assessment Year 2015-2016. The interest was charged from Orchid Hotels till Assessment Year 2014-2015 and from MPPL till Assessment Year 2017-18 (upto 21/02/2017). In view of the adverse financial conditions being faced by the wholly owned subsidiaries, the proposal to waive interest was accepted by the Board of Directors of the Assessee (a public listed company). The Assessee has filed copy of the loan agreements with Orchid Hotels and MPPL along with the copy of the respective board resolutions approving waiver of interest. Thus, the factual averments made by the Assessee are supported by the material on record. We note that while initially the loans were not given as interest free loans, the waiver of interest subsequently granted by the Assessee to its wholly owned subsidiaries, in effect, resulted in grant of interest free loan to subsidiaries for the period falling during the relevant previous year. Issue that arises for consideration is whether such grant of interest free loan can be said to be on account of commercial expedience. The Assessing Officer and the CIT(A) have conclude the aforesaid issue against the Assessee. The relevant part of the order of the CIT(A) reads as under:

"4.3 I have gone through the grounds of appeal statement of facts, assessment order and the submissions of the appellant. It is seen from the submission of the appellant that the loans were given to the two companies which were 100% of subsidiaries of the appellant, and both were engaged in the same hotel business as that of the

appellant. The loans were given when mixed funds were available with the appellant in earlier years and the net owned funds in the years when the loans were given were more than the loans given. It is further submitted that the loans were given on interest at prevailing rates and substantial amount of interest income was earned by the appellant on these loans and offered for tax in earlier years. Waiver of interest on these loans was approved by the appellant's Board on genuine commercial considerations till the improvement in the financial position of the subsidiaries.

4.3.1 On perusal of the submissions of the appellant it is seen that the appellant has reiterated the facts narrated before the AO during the course of assessment proceedings. In fact the same reasons were mentioned in the earlier years also. The contention of the appellant that the said subsidiaries are NPAs and that they are incurring losses is not acceptable. As per the AO those are luxurious hotels and run at full capacity.

4.3.2 Section 36(1)(iii) of the Income tax Act, 1961 refers to the amount of interest paid in respect of capital borrowed for the purposes of business or profession. The assessee has failed to fulfil the primary condition for the allowabiity of the interest paid in respect of capital borrowed that it should be used for the purpose of the business. In the case of the assessee, it has been established that interest bearing funds have been diverted for non business purposes. Therefore, proportionate interest is to be disallowed u/s. 36(1)(ii) of the Act" (Emphasis Supplied)

9.2. On perusal of above, it is clear that both the Assessing Officer and the CIT(A) have concluded that grant of loan to subsidiary cannot be held to be for the business purpose. We note that while dealing with the contention raised by the Assessee regarding the use of mixed funds the CIT(A) has, in paragraph 4.3.3. to 4.3.5 of the

order impugned, referred to the judgment of the Hon'ble Supreme Court in the case of S.A. Builder Vs. CIT(A), Chandigarh & Ors.:288 ITR 1 (2006). On perusal of the aforesaid judgment, we find that the Hon'ble Supreme Court has held as under:

"In our opinion, the High Court as well as the Tribunal and other Income Tax authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed.

The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.

No doubt, as held in Madhav Prasad Jantia vs. CIT (supra), if the borrowed amount was donated for some sentimental or personal reasons and not on the ground of commercial expediency, the interest thereon could not have been allowed under Section 36(1)(iii) of the Act. In Madhav Prasad's case (supra), the borrowed amount was donated to a college with a view to commemorate the memory of the assessee's deceased husband after whom the college was to be named. It was held by this Court that the interest on the borrowed fund in such a case could not be allowed, as it could not be said that it was for commercial expediency. Thus, the ratio of Madhav Prasad Jantia's case (supra) is that the borrowed fund advanced to a third party should be for commercial expediency if it is sought to be allowed under Section 36(1)(iii) of the Act. In the present case, neither the High Court nor the Tribunal nor other authorities have examined whether the

amount advanced to the sister concern was by way of commercial expediency. It has been repeatedly held by this Court that the expression "for the purpose of business" is wider in scope than the expression " for the purpose of earning profits" vide CIT vs. Malayalam Plantations Ltd. (1964) 53 ITR 140, CIT vs. Birla Cotton Spinning & Weaving Mills Ltd (1971) 82 ITR 166 etc.

The High Court and the other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done.

It is true that the borrowed amount in question was not utilized by the assessee in its own business, but had been advanced as interest free loan to its sister concern. However, in our opinion, that fact is not really relevant. What is relevant is whether the assessee advanced such amount to its sister concern as a measure of commercial expediency. Learned counsel for the Revenue relied on a Bombay High Court decision in Phaltan Sugar Works Ltd. Vs. Commissioner of Wealth-Tax (1994) 208 ITR 989 in which it was held that deduction under Section 36(1)(iii) can only be allowed on the interest if the assessee borrows capital for its own business. Hence, it was held that interest on the borrowed amount could not be allowed if such amount had been advanced to a subsidiary company of the assessee. With respect, we are of the opinion that the view taken by the Bombay High Court was not correct. The correct view in our opinion was whether the amount advanced to the subsidiary or associated company or any other party was advanced as a measure of commercial expediency. We are of the opinion that the view taken by the Tribunal in Phaltan Sugar Works Ltd (supra) that the interest was deductible as the amount was advanced to the subsidiary company as a measure of commercial expediency is the correct view, and the view taken by the Bombay High Court which set aside the aforesaid decision is not correct.

Similarly, the view taken by the Bombay High Court in Phaltan Sugar Works Ltd. vs. Commissioner of Wealth-Tax (1995) 215 ITR 582 also does not appear to be correct.

We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

*We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). **However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the***

assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.

In view of the above, we allow these appeals and set aside the impugned judgments of the High Court, the Tribunals and other authorities and remand the matter to the Tribunal for a fresh decision, in accordance with law and in the light of the observations made above.” (Emphasis Supplied)

- 9.3. In the present case it is admitted position that the Assessee had granted loans to wholly owned subsidiaries in the same line of business. Thus, the Assessee had deep interest in the subsidiaries. The CIT(A) has recorded that the wholly owned subsidiaries were operational and running hotels. The fact that the subsidiaries were undertaking projects related to hospitality/restaurant business and that the funds have been used for the same has not been doubted by the authorities below. The Hon'ble Supreme Court has, in the case of SA Builders (supra), held that in case where an assessee has deep interest in the subsidiary and the same is used by the subsidiary for business purpose, the assessee would be entitled to claim deduction for interest expenses incurred in respect of loans granted to such subsidiary. In our view, the above judgment applied to the facts of the present case and the Assessee would be entitled to claim deduction for interest expenses incurred in relation to loan to subsidiaries. The Revenue has failed to bring on record any material to persuade us to take a different view of the matter.
- 9.4. Further, the findings returned by the CIT(A) that the wholly owned subsidiaries were not facing financial difficulties and/or were making profits is contrary to the material on record. The financial statements of Orchid Hotels (Assessment Years 2012-2013 to 2014-15), financial statements of MPPL (Assessment Years 2015-2016 to 2017-18) placed before us as part of the paper-book No.2

(Annexure II & III) support the contention of the Assessee that the wholly subsidiaries (ie. Orchid Hotels and MPPL) were incurring losses on account of high financial cost and were not in a position to service debts taken from banks. In the facts of the present case, the funds were initially granted for expansion of business undertaken by the wholly owned subsidiaries. Later on the interest was waived to protect the investments in subsidiaries by helping them pull out of financial crunch faced by them. Thus, taking overall facts and circumstances of the case, we are of the view that the Appellant acted on account of commercial expediency. The bonafides of the decision taken by the Assessee, which is a public listed company, have not been under doubt during the assessment or the first appellate proceedings.

- 9.5. Accordingly, in view of the above, we delete the disallowance of INR.24,37,53,214/- under Section 36(1)(iii) of the Act. Thus, Ground No. I(a) to I(d) raised by the Assessee are allowed while Ground No. I(e) is dismissed as being infructuous.

ITA No.1483/Mum/2024

10. We would now take up grounds raised by the Revenue in ITA No.1483/Mum/2024. All the grounds raised by the Revenue are directed against the order of CIT(A) deleting the addition of INR.43,19,29,453/- made by the Assessing Officer under Section 68 of the Act in respect of cash deposits. We have given thoughtful consideration to the rival submission and perused the material on record. We note that the CIT(A) had deleted the addition by placing reliance on the remand report, dated 30/01/2024, which has been reproduced in paragraph 5.3 of the order impugned. In the remand report, the Assessing Officer gave factual findings which supported the claim of the Appellant and therefore, the CIT(A) deleted the addition holding as under:

"5.4 I have gone through the grounds of appeal, statements of facts, assessment order and the submissions of the appellant. The additional information filed and the remand report in this regard has also been perused. As per the observations of the AO only 5 accounts were used for cash deposits/business deposits held with HDFC Bank and other entries reported in AIR/SFT were either old entry, duplicate entry, time deposit etc. Further, it is reported in the remand report at para 6.5 that the addition on account of the cash deposits made in the assessment order is over and above the turnover reported by the appellant. During the remand proceedings, nothing contrary to the claim of the appellant has been found. In view of the above, relying on the decision of the assessing officer in the remand report, the addition made by the AO is deleted. **Ground No. 2 is allowed.**"

10.1. During the course of hearing, nothing was placed on record to controvert the above factual findings returned by the CIT(A) by placing reliance on the Remand Report, dated 30/01/2024. On perusal of the Assessment Order, we note that vide notice, dated 28/12/2019, the Assessing Officer had granted final opportunity to the Assessee to provide reconciliation of cash deposits and/or to substantiate with documentary evidences the source of such cash deposits made during the course of demonetization period stating as under:

"Perusal of the ITS/AIR/SFT details reveal that during demonetization period, you have deposited cash of Rs.44,21,71,453/-. In this regard, you are requested to substantiate the source of cash deposits with supporting documentary evidence. Repetitive opportunities were accorded to you but you have failed to furnish the reconciliation of AIR. You have now at fag end i.e. on 28.12.2019 furnished part details. Part compliance is considered as no compliance and hence you are show caused as to why Rs.44,21,74,453/- should not be treated as

*unexplained cash and added to your total income as per the provisions of Sec. 68 of the Act. Your reply should reach this office on or before **29.12.2019** by 3.30 pm.”*

- 10.2. On perusal of above it becomes clear that the Assessee had furnished part reply. However, on perusal of the Assessment Order we find that the same were not considered by the Assessing Officer. Therefore, it was contended by the Assessee before the CIT(A) that the details/submission furnished by the Assessee were not considered. Further, the Assessee had also moved application for admission of additional evidence being the bank certificates issued by 15 banks certifying the actual cash deposited by the appellant during demonetization period and the copies of the relevant bank statements for the period from 9/11/2016 to 30/12/2016. In the aforesaid facts, the remand report was called for by the CIT(A) from the Assessing Officer. In our view, the action of the CIT(A) to call for the remand report was within the powers vested in the CIT(A) in terms of Section 250(4)/251 of the Act and in line with the provisions contained in Rule 46A of the Income Tax Rules, 1962 [the 'IT Rules'].
- 10.3. It is not the case of the Revenue that the CIT(A) had relied upon some documents without seeking report of the Assessing Officer. The contention of the Revenue is that the remand report sent by the Assessing Officer was beyond the scope of the remand report sought. We do not find merit in the aforesaid contention advanced on behalf of the Revenue. The Assessing Officer has, in the remand report (paragraph 2.1), given the factual background in which remand report was sought and given. Thereafter, referring to paragraph 5.3 of the Assessment Order, the Assessing Officer has defined the scope of his inquiry/verification in the remand proceedings which have neither been objected to by the Assessee or by the CIT(A). The Assessing Officer has given remand report

in respect of the submissions of the Assessee which were not considered by the Assessing Officer during the assessment proceedings as well as in respect of the additional evidence filed by the Assessee before the CIT(A). Therefore, we do not find any infirmity in the action of the Assessing Officer submitting the aforesaid remand report.

10.4. In the remand report, after verification, the Assessing Officer concluded that there was nothing to contradict the claim of the Assessee and therefore, in effect, accepted the explanation of the Assessee regarding cash deposits having been made in the normal course of restaurant/hospitality business admittedly being run by Assessee. The CIT(A) also accepted the remand report and deleted the addition after considering the reply/submission filed by the Assessee. Nothing has been brought on record by the Revenue to either controvert the findings of the Assessing Officer [in the remand report] and the CIT(A) [in the order impugned]; or to support the factual issues raised in the grounds of appeal. Further, no infirmity has been pointed out in the replies/details furnished by the Banks and/or the documents, details, bank certificates etc. said to have been filed by the Assessee before the Assessing Officer and CIT(A). We have already concluded that the action of the CIT(A) in calling for the remand report was as per the provisions of the Act and rules made there under.

10.5. Given the abovesaid facts and circumstances of the present case, we do not find any infirmity in the decision of the CIT(A) deleting the addition of INR.43,19,29,453/- made under Section 68 of the Act in respect of cash deposits and decline to interfere with the order passed by the CIT(A). Accordingly, all the grounds raised by the Revenue are dismissed.

Assessment Year 2018-19

Appeal By Assessee : ITA No. 894/Mum/2024

11. By way of the present appeals the Assessee has challenged the order, dated 12/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] whereby the appeal preferred by the Assessee against the Assessment Order, dated 20/09/2021, passed under Section 143(3) read with Section 144B of the Act was

12. The Assessee has raised following grounds of appeal:

1. DISALLOWANCE UNDER SECTION 36(1)(iii)

a. *Learned CIT(A) erred in disallowing Rs. 24,16,10,195/- being interest under section 36(1)(iii) of the Act both on facts and in law.*

b. *On the facts and circumstances of the case and in law, Learned CIT(A) erred invoking the provisions of Section 36(1)(iii) of the Act to disallow the following amounts out of interest expenditure by holding that the advancing of interest free loan to 100% subsidiaries did not fall within the meaning of "for the purpose of the business" in Section 36 (1)(iii) of the Act:*

(1) *Rs. 23,57,56,799/- proportionate interest relatable to alleged interest free loan given to My Orchid Hotels Pune Private Limited; (OHPPL)*

(2) *Rs. 58,53,396/- proportionate interest relatable to alleged interest free loan given to M/s Mahodadhi Palace Private Ltd. (MPPL)*

c. *Learned CIT (A) erred in failing to appreciate that the loans were given to the said two 100% subsidiaries (OHPPL and MPPL) on the consideration of business exigencies on interest at prevailing rates and advancing of such loans was definitely for the purpose of the appellant's business, i.e. furtherance of hotel business of the 100% subsidiaries (OHPPL and MPPL) which is the business of the appellate too, within the meaning of Section 36(1)(iii) of the Act.*

d. *Learned CIT(A) erred in failing to appreciate that the loans were*

given to 100% subsidiaries (OHPPL and MPPL) by the appellant in earlier years out of mixed funds available with the appellant and the appellant's net owned funds at the time of giving these loans were in excess of loan amounts and as such there was no justification for invoking the provisions of Section 36(1)(iii) of the Act. Learned CIT(A) further erred in not appreciating that under the law, in a case when loan is given out of mixed funds and the net owned funds of the assessee are more than the borrowed funds, it is reasonable to presume that the loan was given out of own funds.

- e. Learned CIT(A) erred in failing to appreciate that the appellant had already disallowed an amount of Rs.5,25,20,407/- out of the interest expenditure of Rs.14,35,63,696/- debited to the Profit and Loss account and actual claim of interest amount was only Rs.9,10,43,289/- and disallowance of Rs.24,16,10,195/- out of Rs.9,10,43,289/- was not only incorrect but unreasonable, excessive and not warranted.*
- f. Learned CIT(A) erred in assuming the average interest rate of 12% for making the above disallowance which is nowhere near the actual average rate of interest of 1.64% paid during the year.*
- g. Learned CIT(A) erred in not considering the submissions made by the appellant during the assessment proceedings, both written and oral.*
- h. In any case, the disallowance is excessive.*

2. ADDITION TO INCOME FROM HOUSE PROPERTY UNDER SECTION 24 OF THE ACT:

- a. On the facts and circumstances of the case and in law, Learned CIT(A) erred in making an addition of Rs.11,39,55,350/- as income from property under section 24 of the Act based on the TDS entries in Form 26AS.*
- b. Learned CIT(A) erred in failing to appreciate that these receipts/income were received by the appellant for rendering hotel services and not from letting out any house property to assess the same as income from property under section 24 of the Act.*
- c. Learned CIT(A) failed to appreciate that the aforesaid income of*

Rs.11,39,55,350/- was already booked by the appellant as income from hotel business and was duly include in the income from business offered for taxation in the return of income.

d. Learned CIT(A) erred in making the addition of Rs.11,39,55,350/- as income from property which resulted into taxing the same income twice under two heads of income.

e. Learned CIT(A) erred in not reducing the amount of alleged addition of Rs.11,39,55,350/- from income from business."

Ground No. 1(a) to 1(h)

13. Ground No.1(a) to 1(h) raised in the present appeal pertain to disallowance of INR.24,16,10,195/- made by the Assessing Officer under Section 36(1)(iii) of the Act which was confirmed by the CIT(A). The aforesaid disallowance of INR.24,16,10,195/-was computed by the Assessing Officer as under:

- (a) Mahodhadhi Palace Pvt. Ltd : INR 20,67,510/-
INR 6,98,74,186 x 12% p.a x 90/365 days
[proportionate interest cost for the period falling in previous year]
- (b) Mahodhadhi Palace Pvt. Ltd : INR 37,85,886/-
INR 4,18,74,189 x 12% p.a x 275/365 days
[Proportionate interest cost for the period falling in previous year]
- (c) Orchids Hotel Pune Pvt Ltd INR 23,57,799/-
INR 196,46,39,996/- x 12% p.a.

14. Both the sides agreed that Ground No.1 (a) to 1(h) raised in the present appeal are identical to Ground No. I(a) I(e) to raised in the appeal for the Assessment Year 2017-18 and therefore, in view of the facts that there is no change in the facts and circumstances of the case, our finding/adjudication on this issue in appeal for the Assessment Year 2017-18 shall apply mutandis mutatis to the issues raised in the present appeal pertaining to Assessment Year 2018-19. Accordingly, in view of reasoning given in paragraph 9 to 9.5 above, disallowance of INR.24,16,10,195/- made by the Assessing Officer under Section 36(1)(iii) of the Act

is deleted. Thus, Ground No. 1(a) to 1(d) raised by the Assessee are allowed and therefore Ground No.1(e) to 1(h) raised by the Assessee are dismissed as being infructuous.

Ground No. 2(a) to 2(e)

15. Ground No.2(a) to 2(e) raised by the Assessee pertain to addition made by the Assessing Officer under Section 24 of the Act treating INR.11,39,55,350/- as income from house property.
 - 15.1. The relevant facts for adjudication of the grounds under consideration are that during the assessment proceedings the Assessing Officer noticed that Assessee had received rental income of INR.11,84,13,684/- on which tax was deducted at source under Section 194(I)(b) of the Act. However, in the return of income the Assessee has offered to tax an amount of INR.44,58,334/- as income from house property. Therefore, the Assessee was asked to provide the reconciliation statement and explaining the difference between the income from house property as per the Income Tax Return and the rental receipts has reflected in Form 26AS. According to the Assessing Officer, the Assessee failed to provide necessary explanation/reconciliation and therefore, an addition of INR.11,39,55,350/- was made in the hands of the Assessee under Section 24 of the Act treating the said amount as income from house property.
 - 15.2. The appeal preferred by the Assessee on this issue was dismissed by the CIT(A) holding that the Assessee had failed to furnish supporting documents and details to substantiate the submission that the income has been offered to tax as business income.
 - 15.3. Being aggrieved, the Assessee has carried the issued before the Tribunal.
 - 15.4. The Learned Representative for Assessee submitted that the

Authorities below had failed to appreciate that the income under consideration has been offered to tax as business income. The Assessee had filed chart showing details of TDS under Section.194(1)(b) of the Act extracted from Form 26AS (placed at page no.1-4 of the paper book) and chart showing the details of the rent earned by the Assessee as per Form 26AS and the rent offered by the Assessee as per the Gross Revenue in the Profit and Loss Account (placed at page no.60-63 of the Paper Book) which support the contention of the Assessee that the rental income under consideration has been offered to tax as business income. However, the aforesaid documents and details were not taken into consideration by the Assessing Officer and the CIT(A).

- 15.5. Per contra the Learned Departmental Representative supported that the order passed by the CIT(A) and submitted that the Assessee had failed to support the submissions by cogent evidence during the assessment proceedings and appellate proceedings before the CIT(A).
- 15.6. We have considered the rival submissions and perused the material on record. We find that vide letter, dated 26/02/2021, the Assessee had submitted that the rental income which has been subjected to tax deduction at source under Section 194(I)(b) of the Act has been offered to tax as business income. On perusal of Profit and Loss Account along with Note No.34 dealing with the 'Revenue from Operations', we find that 'Room Income' and 'Food And Banquet Income' has been included under the head 'Sale & Services' and credited to the Profit and Loss Account as 'Revenue from Operations'. It has not been disputed by the Revenue that chart showing details of TDS under Section 194(1)(b) of the Act and details of rent earned by the Appellant as per Form 26AS and rent offered by the Appellant as per the Gross Revenue in the Profit and Loss Account were not filed before the Authorities

below. Therefore, keeping in view the overall facts and circumstances of the case we delete the addition of INR.11,39,55,350/- made under Section 24 of the Act and set aside the issue back to the file of Assessing Officer for denovo adjudication after carried out necessary enquiries/verifications. The Assessee is directed to file all relevant details and document before the Assessing Officer and co-operate in the hearing. The Assessing Officer is directed to grant reasonable opportunity of being heard to the Assessee. In term of aforesaid the Ground No. 2(a) to 2(e) raised by the Assessee are allowed for statistical purposes.

16. In result, (a) appeals preferred by the Revenue for the Assessment Years 2017-18 is dismissed; (b) the Appellant preferred by the Assessee for the Assessment Years 2017-2018 is allowed and (c) Appellant preferred by the Assessee for the Assessment Years 2018-19 is allowed for statistical purposes.

Order pronounced on 04.11.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.11.2024
Milan, LDC.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai