

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

| |
|----------------------------------|
| ITA No. 450/Coch/2023 |
| Assessment Year : 2014-15 |

| | | |
|--|------------|--|
| M/s. C & R Hotels Pvt. Ltd., No. 18, Building No. 1/509- A1, A2, A3, Near Fort Kochi Bus Terminal, Fort Kochi P.O., Cochin – 682 001, Ernakulam, Kerala. PAN: AADCC7824Q | Vs. | The Deputy Commissioner of Income Tax, Corporate Circle – 1 (1), Kochi. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|-------------------------|
| Assessee by | : | Shri K V Jose, CA |
| Revenue by | : | Smt. Leena Lal, Snr. AR |

| | | |
|-----------------------|---|------------|
| Date of Hearing | : | 03-10-2024 |
| Date of Pronouncement | : | 20-12-2024 |

ORDER

PER BENCH

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 21/03/2023 in respect of the A.Y. 2014-15.

2. The brief facts of the case are that the assessee is a private limited company engaged in the hospitality industry. The assessee filed their return of income on 29/03/2016. The AO not accepted the claim of carry forward of unabsorbed depreciation and also treated the working capital received

from the share holders and Director as unexplained cash credit for the reason that the Director had filed their return belatedly. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the carry forward unabsorbed depreciation is eligible for deduction and relied on section 32(2) of the Act. Insofar as the unexplained cash credit, the assessee gave the details of the loan amount received from its Director which are all effected through the banking transactions. The assessee also explained that a further sum of Rs. 34,26,046/- are related to the share application money received from the Director who is having the sea food export business and therefore the treating of the said amount as unexplained cash credit u/s. 68 is not correct. The Ld.CIT(A) considered the arguments of the assessee and granted relief in respect of the carry forward of the unabsorbed depreciation by relying on the Hon'ble Delhi High Court judgment. Insofar as the addition made u/s. 68 of the Act, the Ld.CIT(A) had confirmed the order of the AO. Therefore the present appeal has been filed by the assessee before this Tribunal.

3. The appeal has been filed by the assessee before this Tribunal with a delay of 19 days and the assessee had submitted the reasons in the delay condonation affidavit and we have perused the reasons and satisfied that the assessee has a valid reason for not presenting the appeal before this Tribunal. We therefore condone the said delay of 19 days in filing the appeal before this Tribunal.

4. At the time of hearing, the Ld.AR submitted that the assessee had received a sum of Rs. 59,50,000/- as unsecured loans from one of its Director Mr. Roy J Vayalat in order to meet their working capital requirements. The Ld.AR further submitted that all the said loan amount was transferred from the personal account of the Director and also enclosed the bank statement of the Director from the following banks:

- 1) Axis Bank
- 2) Federal Bank
- 3) Canara Bank

5. The Ld.AR also filed the copy of the cash book in respect of the RR International which is owned by the said Director and invited our attention to the entries made in the said statements and contended that the amounts were transferred from the said accounts and therefore it is not an unexplained cash credit u/s. 68 of the Act. The Ld.AR also further submitted the copies of the return of allotment of shares in form no. PAS3 and the minutes of the Board of Directors of the assessee in which the allotment of share has been confirmed that the shares of the assessee company were allotted to the said Mr. Roy J Vayalat. The Ld.AR also pointed out that for the allotment of shares also, the monies were transferred from the bank account of the Director as well as the business entity owned by the said Director. The Ld.AR therefore prayed that the appeal may be allowed by considering the said documents filed before this Tribunal.

The Ld.DR relied on the orders of the lower authorities and submitted that the assessee had not furnished the bank statements of the Director, business entity owned by the Director and also the bank statement of the assessee and therefore the same may not be considered and prayed to dismiss the appeal.

6. We have heard the arguments of both sides and perused the materials available on record.

7. We find that the Ld.CIT(A) had observed in his order at paragraphs 6.11 and 6.12 in which the Ld.CIT(A) had reproduced the finding given by the AO for not accepting the case of the assessee. In paragraph no. 6.12, after observing that the assessee had submitted the ledger, extract of cash book of RR International, he further observed that the appellant has not proved how the cash was received by way of supporting evidence. The Ld.CIT(A) further observed that the assessee had merely provided a summary of cash book for RR International.

8. We have perused the paper book filed by the assessee in which the various bank statements of the Director as well as the assessee and the RR International were filed by the assessee in support of their claim that the loan was routed through the banking transactions and therefore it could not be termed as unexplained cash credit. Even though we are accepting the case of the assessee but unfortunately, all the details now filed before this Tribunal were not produced before the AO in support of the assessee's case. In fact, the share allotment money and the subsequent allotment and the subsequent Board resolutions confirming the allotment were also evident that the money was received for allotment of shares but the same were not placed before the AO while making the assessment. In such circumstances, we are of the view that one more opportunity may be granted to the assessee to place all the materials before the AO in order to substantiate their claim that there is no unexplained cash credit warranting addition u/s. 68 of the Act. We therefore, remit this issue to the file of Ld.AO.

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

Order pronounced in the open court on 20th December, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 20th December, 2024.
/MS /

Copy to:

- | | |
|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin