

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

**BEFORE SHRI INTURI RAMA RAO, AM  
AND SHRI SOUNDARARAJAN K., JM**

**ITA Nos. 92 & 93/Coch/2020  
Assessment Years: 2012-13 & 2014-15**

ACIT, Corporate Circle - 2(1) ..... Appellant  
3rd Floor, C.R. Building, I.S. Press Road  
Kochi 682018

Vs.

Taj Kerala Hotels & Resorts Ltd. .... Respondent  
The Gateway Hotel, 2nd Floor  
Pioneer Towers, Marine Drive  
Ernakulam 682011  
[PAN: AABCT0238M]

**CO Nos. 8 & 9/Coch/2020  
Assessment Years: 2012-13 & 2014-15**

Taj Kerala Hotels & Resorts Ltd. .... Respondent  
The Gateway Hotel, 2nd Floor  
Pioneer Towers, Marine Drive  
Ernakulam 682011

Vs.

ACIT, Corporate Circle - 2(1) ..... Appellant  
3rd Floor, C.R. Building, I.S. Press Road  
Kochi 682018

Assessee by: Shri Avneesh Vishwanathan, CA  
Revenue by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 16.12.2024  
Date of Pronouncement: 30.12.2024

**ORDER**

**Per: Inturi Rama Rao, AM**

These appeals filed by the Revenue are directed against the common order of the Commissioner of Income Tax (Appeals)-1, Kochi [CIT(A)] dated 04.11.2019 for Assessment Years (AY) 2012-13 & 2014-15.

2. The assessee filed Cross Objections in support of the order of the CIT(A).

3. Since common facts and identical issues are involved in both the appeals, we proceed to disposed of the same by this consolidated order for the sake of convenience.

4. For the sake of clarity the facts relevant to appeal in ITA No.92/Coch/2020 for AY 2012-133 are stated herein.

5. Brief facts of the case are that the respondent assessee is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of running a hotel. It is a joint venture project between Tourist Resorts (Kerala) Ltd. and India Hotels Company Ltd. The return of income for AY 2012-13 was filed on 27.09.2012 declaring total income of Rs. 3,64,52,740/-. Against the said return of income, assessment was completed by the ACIT, Circle 2(1), Kochi (hereafter "the AO") vide order dated 25.03.2015 passed u/s. 143(3) of the Income Tax Act, 1961 (the

Act) at a total income of Rs. 5,72,09,170/-. While doing so the AO made addition of Rs. 1,98,73,668/- being consultancy charges paid to India Hotels Company Ltd. in terms of Article 7 of the agreement entered with the respondent company. The relevant article of the agreement was extracted by the AO. The AO disallowed the consultancy expenditure by holding that: (i) appellant had failed to furnish the details of consultancy services provided by the India Hotels Company Ltd. and accordingly held that it is not a genuine expenditure incurred wholly and exclusively for the purpose of business but only shared income to its major shareholders; (ii) the AO opined on the basis of the statement made by the respondent assessee that the payment is made for the use of trademark 'Taj' and the logo of Indian Hotels Company Ltd. The expenditure should be capitalised; and (iii) the AO was of the opinion that since the consultancy charges were paid in terms of fixed percentage of the profit, and gross turnover, without rendition of services by the holding company, the addition is required to be made u/s. 40A(2)(b) of the Act.

6. The AO also made addition of payments made to the foreign travel agents on the ground that no TDS was made on the foreign payments by holding that there is a business connection in the payments made to the non-resident which is liable for tax deduction at source u/s. 195 of the Act. The AO also made addition of interest received on income tax refund amounting to Rs. 2,62,620/-.

7. Being aggrieved, an appeal was filed before the CIT(A) contending that the charges for consultancy services were paid to India Hotels Company Ltd. in consideration of the consultancy services rendered apart from the reimbursement of the expenditure. As regards the disallowance of payment made to the foreign travel agent, it is contended that the commission is paid towards the services rendered outside India and, therefore, no TDS is required to be made. The CIT(A), after considering the written submission filed before him as well as the evidences furnished in support of the consultancy services, deleted the addition accepting the written submissions and the additional evidence filed by the assessee. The CIT(A) also deleted the addition made on account of foreign travel expenses by holding that the services are rendered outside India and, therefore, no tax was liable to be deducted at source on the payments made to the foreign agent.

8. Being aggrieved, the Revenue is in appeal before us in the present appeal challenging correctness of the order of the CIT(A).

9. The learned CIT-DR submits that the CIT(A) had merely accepted the written submissions filed by the assessee without examining any evidence with regard to the rendition of consultancy services by the India Hotel Company Ltd. and similarly, without examining the evidences whether the services are rendered outside India or not deleted the addition on account of foreign travel expenses of Rs.6,47,176/-.

10. On the other hand, the learned A.R. submits that no interference is required in the order of the CIT(A) as it is based on proper appreciation of the facts and law.

11. We have heard the rival contentions of both the parties and perused the material available on record. Grounds of appeal 1 to 2.5 challenges the correctness of the decision of the CIT(A) holding that consultancy expenditure of Rs. 1,98,73,668/- paid to India Hotels Company Ltd. is allowable. On perusal of the assessment order, it is evident that the AO while disallowing the payment of consultancy expenditure of Rs. 1,98,73,668/- had assigned three reasons as discussed supra. On appeal before the CIT(A), the CIT(A), after accepting the written submissions and additional evidences in support of the claim for allowance of consultancy expenditure, had merely allowed the claim without rendering any independent findings as to how he reached the conclusion that the consultancy services are actually rendered by the India Hotel Company Ltd nor met the reasoning of the AO. The CIT(A) passed a very cryptic order. The CIT(A) had merely accepted the additional evidences without complying with the provisions of Rule 46A of the I.T. Rules, 1962 and also without recording reasons under what circumstances the additional evidence was admitted and also without calling for remand report from the AO . Thus, the CIT(A) has passed the order in gross violation of principles of natural justice. Therefore, the grounds of appeal 1 t 2.5 stands remanded

back to the file of the CIT(A) for de novo adjudication in accordance with law after affording reasonable opportunity of hearing to the assessee.

12. Similarly with regard to grounds of appeal No. 3 to 3.5 challenges the decision of the CIT(A) deleting the addition made on account of foreign travel expenses of Rs. 7,47,176/-. On perusal of the order of the CIT(A) it would show that the CIT(A), without examining the evidences whether the services are rendered outside India or not, had merely accepted the contention of the appellant. The decision of the CIT(A) is not based on any evidence. Therefore, the findings of the CIT(A) on this issue are also reversed. The grounds of appeal raised by the Revenue stand remitted to the file of the CIT(A) for de novo adjudication in accordance with law after affording reasonable opportunity of hearing to the assessee.

13. The above findings are mutatis mutandis applicable to the appeal in ITA No. 93/Coch/2020.

14. The cross objections are filed by the assessee are in support of the order of the CIT(A). Therefore, the cross objections becomes infructuous and hence dismissed as such.

15. In the result, the appeals filed by the Revenue are allowed and the cross objections of the assessee are dismissed.

Order pronounced in the open court on 30<sup>th</sup> December, 2024

Sd/-  
**(SOUNDARARAJAN K.)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Cochin, Dated: 30<sup>th</sup> December, 2024

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Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin