INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA Nos.:- 5848, 5849/Del /2014
Assessment Years: 2009-10, 2010-11

ACIT Central Circle-13, New Delhi.	Vs.	Claridges Hotels Pvt. Ltd. 12, Aurangzeb Road New Delhi PAN AAACC0022B
(Appellant)		**(Respondent)**

CO Nos.:- 160 & 161/Del /2015
(In ITA Nos. 5848/DEL/2014, 5849/DEL/2014)
Assessment Years: 2009-10, 2010-11

Claridges Hotels Pvt. Ltd. 12, Aurangzeb Road New Delhi PAN AAACC0022B	Vs.	ACIT Central Circle -13 New Delhi
(Appellant)		**(Respondent)**

Department by:	Smt. Paramita Tripathy, CIT (DR)
Assessee by :	Shri Sameer Gupta, Advocate
Date of Hearing	02/11/2017
Date of pronouncement	10/11/2017

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeals have been filed by the revenue and cross objections by the assessee against separate impugned order of even date 11.8.2014, passed by Ld. CIT (Appeals)-I, New Delhi for the

quantum of assessment passed under section 153A read with section 143(3) for the assessment years 2009-10 and 2010-11.

2. Since common issues are involved in all the appeals arising out of identical set of facts, therefore, the same were heard together and have been disposed of by way of this consolidated order. We will first take up revenue's appeal and cross objection for the assessment year 2009-10. In the grounds of appeal the revenue has raised following grounds:-

1. *"The order of Ld. CIT (A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the disallowance of Rs.9,71,73,724/- made by AO on account of disallowance u/s 14A read with Rule 8D of the Income Tax Act.*
3. *On the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs.13,03,519/- out of total addition of Rs.33,03,519/- made by AO on account of disallowance of depreciation and car running expenses.*
4. *On the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs.7,75,338/- out of total addition of Rs.18,80,396/- made by AO on account of bad debts written off."*

Whereas in the cross objection, the assessee has raised following grounds:-

1. *That the order u/s 153A of the Act dated 29.3.2014 passed by the Ld. A.O. is bad on facts and in law.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not considering that the additions were made u/s 153A despite the fact that there was no incriminating document found during the course of search.*
3. *That the Ld. CIT(A) has erred in sustaining the disallowance of bad debts of Rs. 11,05,058/- claimed as business expenditure as*

the trading advance become irrecoverable and written off in books of accounts.

4. *That the on the facts and circumstance of the case, the Ld. CIT(A) has erred in adjudicating the ground of addition of an ad hoc amount of Rs. 20,00,000/- in respect of alleged expenses on running and maintenance of cars.*

3. A search and seizure operation was carried out u/s 132(1) at residential and business premises of Shri Suresh Nanda, his family members and his business associates on 24.2.2012. The assessee company was also covered under the said search on the same date. The Company is running business of running the hotels under the name and style of 'M/s. Claridges Hotels Pvt. Ltd.' Brief *qua* the first issue raised in Revenue's appeal are that in the case of the assessee company original assessment was completed u/s 143(3) on 16.12.2011, wherein the disallowance u/s 14A for sums amounting to Rs.9,74,27,932/- was made, out of which Rs. 5,45,57,395/- was deleted by the Ld. CIT(A). In the assessment proceedings initiated vide notice issued u/s 153A, the A.O. has again made the said disallowance u/s 14A read with rule 8D and computed the disallowance u/s 14A at Rs. 9,71,73,724/-.

4. Ld. CIT (Appeal) in the impugned order has deleted the said addition on the ground that in the original assessment proceedings already a disallowance of Rs. 4,28,70,537/- has been sustained and therefore, again adding the entire disallowance is uncalled for.

5. After hearing both the parties and on perusal of the impugned orders, one very important fact which is permitting through is that, during the year assessee has not earned any exempt income and this fact has been noted by the AO also in the impugned assessment order as well as by the Ld. CIT(A) in the impugned order. The assessee had

relied upon certain decisions before both the authorities contending that, if there is no exempt income, then no disallowance u/s 14A can be made. This fact is borne out from the discussions appearing on para 4.1 of the Ld. CIT (A) order. Whence assessee has not earned any exempt income, then no disallowance u/s 14A can be made in this year in view of the ratio and principle laid down by the Hon'ble Jurisdictional High Court in the case of **Cheminvest Ltd. vs. ACIT,** reported in **378 ITR 33 (Del)**. Thus, on this ground alone, we hold that the disallowance u/s 14A read with Rule 8D for sums amounting to Rs. 9,71,73,724/- cannot be sustained and is directed to be deleted.

6. So far as the issue raised in ground No. 3, i.e., deletion of addition of Rs. 13,03,519/- out of total addition of Rs. 33,03,519/- on account of disallowance of depreciation and car running expenses, the brief facts are that during the course of search, certain cars were found from the residence of Shri Suresh Nanda as well as Shri Sanjeev Nanda, who were though not the Director in the company but directly and indirectly had control in the assessee company. Accordingly, the A.O. issued show cause notice as to why the depreciation claimed in respect of these cars should not be disallowed. The details of the cars have been given in para 6 of the assessment order. The assessee in response to show cause notice submitted that, the Claridges Hotel was undergoing extensive renovation of its hotel and there were severe constraint of parking space and pending such renovation, these cars were temporarily parked at the residence of Shri Suresh Nanda who resides nearby at 4, Prithviraj Road and both being non-resident mostly stayed abroad and therefore, their parking space was used. The A.O. held that neither Shri Suresh Nanda nor Shri Sanjeev Nanda offered any income for letting out their premises for parking out the cars of M/s Claridges Hotel and thus, he held that these cars cannot

be said to be wholly and exclusively used for the purpose of assessee's business and accordingly, he disallowed the depreciation and also made lump sum amount of Rs. 20 lacs on account of repairs and maintenance and expenses related to these cars. In this manner, disallowance of Rs. 33,03,519/- was made.

7. Ld. CIT(A) first of all, after verifying the facts on record held that the motor vehicles were owned by the assessee company and Shri Suresh Nanda and his son Shri Sanjeev Nanda held majority stake directly or indirectly in the assessee company. He further held that there is no evidence to establish that motor cars were not used for the purpose of assessee's business and even if the vehicles were parked at the residence of two majority stake-holders or it has been used by them. In absence of such evidence, then it is presumed that the cars have been used for the purpose of business of the assessee company. In any case depreciation has to be allowed to the owner who has legal right on the asset and has been used for its business purpose. Thus, he allowed the claim of depreciation. So far as the disallowance of Rs. 20 lacs is concerned the Ld. CIT (A) held that no such disallowance has been made in the assessment order which prima facie appears to be incorrect finding as the A.O. has made specific disallowance of Rs. 20 lacs as per discussion appearing at paras 4 and 5 of the assessment order which reads as under:-

> *"The reply of the assessee company has been examined and has been found non tenable in view of the fact that Mr. Suresh Nanda as well as Mr. Sanjeev Nanda are not the Directors in the assessee company and officially they have not been provided any car by these companies.*
>
> *It is important to mention here that neither Mr. Suresh Nanda nor Mr. Sanjeev Nanda has offered any income for letting out their premises for parking of cars by M/s. Claridges Hotels*

Pvt. Ltd. In view of the facts, it can be stated that these cars cannot be said to be wholly & exclusively for the purpose of the business. The assessee has furnished of depreciation claimed but has not furnished the expenses related to fuel, maintenance, driver salaries etc. In the absence of details a lump sum amount of Rs. 20 lacs is considered as expense related to these cars for their running in addition to depreciation claimed. Therefore, depreciation claimed by the company on these cars was disallowed and expense of Rs. 20 lacs is being added to the total income of the assessee. The Penalty proceedings u/s 271(1)(c) are being initiated separately.

(Disallowance of Rs. 33,03,519/-)"

8. After hearing both the parties and on the perusal of the relevant finding given in the impugned order, we find that so far as this disallowance of depreciation is concerned there is no dispute that these cars are assets of the assessee company which have been shown as part of the fixed assets in the balance sheet. Most of the cars are appearing as WDV in the schedule of fixed assets and depreciation has been claimed at Rs. 13,03,519/-. Once the cars are owned by the assessee company and is found to part of fixed assets then, ostensibly depreciation has to be allowed. The assessee before the AO as well as before the Ld. CIT (A) has categorically submitted that since renovation work was carried out at hotel premises, therefore, these cars were parked at the residence of Shri Suresh Nanda and his son Shri Sanjeev Nanda who held majority stake directly or indirectly in the assessee company. Mere parking of cars at the premises of these persons, cannot *ipso facto* lead to an inference that the depreciation has to be disallowed which otherwise are the assets of the assessee company. Assessee had also submitted that these cars were used purely and wholly for the purpose of hotel business and in absence of

rebuttal of this explanation, depreciation cannot be disallowed and accordingly, we held Ld. CIT (A) has rightly allowed depreciation.

9. Lastly, coming to the issue of deletion of bad debt of Rs. 7,75,338/- by Ld. CIT(A) as raised in ground No. 4, the brief facts are that assessee company had claimed sum of Rs. 18,80,396/- as deduction in respect of bad debt in return of income in the original assessment order passed by the AO, vide order dated 16.12.2011. The said amount was disallowed and out of the said amount the Ld. CIT(A) has allowed the deduction to the extent of Rs. 7,75,338/-. The AO however repeated the said addition while framing the assessment u/s 153A on the grounds that assessee could not produce the documentary evidence of the bad debts. Ld. CIT (A) following the earlier appellate order in the proceedings u/s 143(3) held that the bad debt amounting to Rs. 7,75,338/- is to be allowed, whereas the balance amount of Rs. 11,05,058/- cannot be allowed as it was in the nature of trade advances and assessee could not produce any evidence.

10. After hearing both the parties on this issue, we find that the assessee had stated that amount treated as bad debt amounting to Rs. 7,75,338/- had been duly offered to tax in the earlier years for which year wise details of income offered alongwith the copy of ledger account was submitted before the AO as well as before the Ld. CIT(A). When this fact is not disputed that the said amount has been offered to tax in the earlier year and assessee has written-off the said amount from its account in this year, then as per the law bad debts written-off has to be allowed in this year and assessee does not have to prove that the amount has become bad. So far as the trade advance of Rs. 11,05,058/- was concerned, the same was made to M/s. Pasio

Industries (S) Pte Ltd. for supply of raw material, cooking items etc., who had failed to execute the order. Despite the best efforts by the assessee, order could not be executed nor could the amount be recovered. Hence, the assessee has written off the said sum. So far as the issue of allowing of bad debt amounting to Rs. 7,75,338/-, we do not find any infirmity in the order of Ld. CIT(A), because the amount written off as bad debt has been admitted to be offered to tax in the earlier years and it has been written off from the books of accounts in this year and hence, the conditions as laid down u/s 36(2) read with section 36(1)(vii) stands satisfied and therefore, the bad debt written off has to be allowed as deduction. Accordingly ground No. 4 raised by the revenue is dismissed.

11. In the result appeal of the revenue is dismissed.

12. In ground No. 3 and 4 of assessee's cross objection, the assessee has raised the issue of disallowance of bad debt of Rs. 11,05,058/- and adhoc disallowance of Rs. 20 lacs made by the AO on account of running and maintenance of cars. So far as the issue of disallowance of bad debt is concerned, as noted above, the assessee has given a trade advance of Rs. 11,05,058/- to M/s. Pasio Industries (S) Pte Ltd for supply of raw material, cooking items etc. However the said company failed to execute the order placed with it and despite best efforts made by the assessee company the order could not be executed. Accordingly, the said amount was written-off in the accounts as unrecoverable. The assessee's case has been that the said amount should be allowed either as business expenditure or as a business loss. However, the Ld. CIT (A) has held that since this issue has been decided against by the Ld. CIT (A) in the original quantum proceedings and the matter is subjudice before the Tribunal, therefore,

he has upheld the said addition. It is not in dispute that the amount of Rs. 11,05,058/- is a trade advance given during the course of business and for business purpose which had become irrecoverable. In this situation, ostensibly such an amount has to be allowed either as business expenditure u/s 37(1) or as a business loss while computing the profit and gains u/s 28 read with section 29, because such a trade advance was given during the course of the running of the business. Thus, the said amount though may not be allowed as bad debt but has to be allowed as business loss. Accordingly, we hold that the amount of trade advance written off in this year has to be allowed and consequently, ground No. 3 is allowed.

13. So far as the issue of adhoc disallowance of Rs. 20 lacs in respect of expenses of running and maintenance of cars, as discussed in the departmental appeal, the assessee owns various cars which are part of fixed assets and is being used for the purpose of hotel business of the assessee. The AO while making the disallowance has made purely adhoc disallowance without pin pointing any specific nature of expenditure which can be said to be not for the purpose of business. In the case of the company, which is running a five star hotel and using cars for its hotel business and maintaining all the records, the AO has to point out as to which part of the expenditure debited are not been verifiable. Simply because cars were parked for temporary period at the premises of promoters, it does not mean it were used for non-business purpose. Such an adhoc disallowance cannot be sustained. Ld. CIT (A) has not examined this issue at all and gave a wrong finding of fact that AO has not made any such disallowance. Accordingly, we direct the deletion of such adhoc disallowance made by the A.O.

14. Since we have already decided the issues on merits, therefore, the legal ground raised vide ground Nos. 1 and 2 in the cross objection have become purely academic and the same are not being adjudicated and are treated as infructuous.

15. Now we take up the revenue's appeal as well as cross appeal of the assessee for assessment year 2010-11, wherein the following grounds have been raised:-

1. *"The order of Ld. CIT (A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,42,26,220/- made by A.O. on account of disallowance u/s 14A read with Rule 8D of the Income Tax Act.*
3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 12,54,115/- out of total addition of Rs. 32,54,115/- made by A.O. on account of disallowance of depreciation and car running expenses."*

16. So far as the disallowance made u/s 14A, herein in this year also it is an admitted fact that no exempt income has been earned by the assessee and this fact has been noted by the A.O. in para 5.1 of the assessment order so. However in this year, the assessee has *suo-moto* disallowed sum of Rs. 2,78,38,017/- which has been enhanced to Rs. 5,20,64,236/- by the A.O. and accordingly, net addition of Rs. 2,42,26,219/- has been made. Ld. CIT (A) has deleted the said disallowance after observing and holding as under:-

> *"4.4 I find that the appellant had itself disallowed an amount of Rs. 2,78,38,017/- on account of application of Rule 8D in the computation of income. The revenue, on the other hand, has worked out the disallowance to an amount of Rs. 5,20,64,236/- and added the difference of Rs. 2,42,26,219/- to the returned income of the appellant. Applying the decision taken by me in A.Y.*

2009-10, the disallowance works out to Rs. 2,58,28,769/-. Since the appellant had itself disallowed an amount higher than the disallowance to be made, as per the decision taken by me in A.Y. 2009-10, or restricting it to the extent of exempt dividend income as has been held by several courts lately (cited by Ld. AR), there is no need to disturb the computation filed by the appellant regarding this matter, admitting Rs. 2,78,38,017/- as disallowable. There is no need to adjudicate the legal, and additional, grounds of appeal in view of acceptance of higher disallowance by the appellant. There is no case for mechanical application of Rule 8 D and therefore further addition of Rs. 2,42,26,219/- made by the revenue to the returned income is deleted. This ground of appeal is decided in these terms."

17. After considering the rival submissions, once it is an admitted fact that assessee has not earned any exempt income, then in view of the judgment of Hon'ble Jurisdictional High Court in the case of **Cheminvest Ltd. vs. ACIT** reported in **378 ITR 33** no disallowance u/s 14A can be made. Thus, disallowance made by the AO over and above the amount offered by the assessee is directed to be deleted and only the amount *suo-motto* expense disallowed by the assessee shall remain sustained. In the result ground No. 1 raised by the revenue is dismissed.

18. So far as the issue raised in ground No. 3 is concerned, that is depreciation on cars at their WDV, admittedly this issue is similar to ground raised in ground No. 3 of revenue's appeal for the assessment year 2009-10 and therefore, in view of the finding given therein which is applicable on the facts in the present case *mutatis mutandis*, we hold that the addition made on account of disallowance on depreciation on cars by the AO cannot be sustained and the same has rightly been deleted by the Ld. CIT (A). Thus ground no. 3 raised by the revenue is dismissed.

19. Now coming to the cross objection filed by the assessee, so far as the issue raised in ground No. 3, again admittedly it is similar to the ground raised by the assessee in Cross Objection for assessment year 2009-10 and therefore, in view of the finding therein, we hold that no addition on adhoc basis can be made in respect of running and maintenance of the cars.

20. Lastly, so far as disallowance of depreciation of Rs. 1,75,048/- as raised in ground no. 4 of Cross Objection claimed on gym equipments installed in the premises of Managing Director, the assessee's case before the A.O. as well as Ld. CIT(A) has been that as per the corporate policy the provision of fitness centre has been done for purposes to ensure employees to stay fit and healthy and in any case it can be treated as perquisite in hands of Managing Director but cannot be disallowed in the hands of the assessee company and in support reliance was placed on various decisions. The AO and Ld. CIT (A) have disallowed the depreciation on the ground that though ownership belongs to the assessee but installation of the equipment at residential premises of the Directors share holders makes its usage private which cannot be held to be for the business purpose.

21. After hearing both the parties, we find that it is not in dispute that the equipment has been bought by the company and is appearing at the fixed assets in the balance sheet of the assessee company and said assets has been acquired during the running of hotel business. Then simply because it is being used by Managing Director it cannot be held to be for private use so as to warrant disallowance of depreciation. At the most if any equipment has been placed for exclusive use of Managing Director the same should be added as perquisite in the hands of the said Director but cannot be disallowed

in the hands of the assessee company when this asset already forms part of the block of the assets and depreciation has been allowed earlier. Accordingly, we do not find any reason to sustain such disallowance and the same is directed to be deleted.

22. In view of the findings given on merits, issues raised in ground No. 1 and 2 have become purely academic and same are not adjudicated upon accordingly ground No. 1 and 2 are dismissed and infructuous.

23. In the result both the appeals of the revenue are dismissed whereas the assessee's cross objection are allowed.

Order pronounced in the open court on 10th November, 2017.

sd/- **sd/-**

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 10 /11/2017

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi