

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी ,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **3155/CHNY/2018**

निर्धारण वर्ष / Assessment Year: 2014-15

M/s. Dodla International Ltd.,
4/54, Rainbow Kasturi III Main
Road, R.A. Puram,
Chennai – 600 028.

The ACIT,
v. Corporate Range-1 ,
Chennai.

PAN: AABCD6591R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 28.01.2021

घोषणा की तारीख/Date of Pronouncement

: 08.02.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 30.07.2018 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

- 1. The order of the Commissioner of Income Tax (Appeals) - 1, Chennai dated 30.07.2018 in I.T.A.No.545/CIT(A)-1/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*
- 2. The CIT (Appeals) erred in sustaining the assessment of income earned under the Memorandum of Understanding executed on 11.08.2009 with M/s Orient Hotels Limited under the head 'income from house property' as against the reporting of such income under the head income from business' in the computation of taxable total income without assigning proper reasons and justification.*
- 3. The CIT (Appeals) failed to appreciate that the assessment of licence income earned under the head 'income from house property' was wrong, erroneous, unjustified, incorrect and not sustainable in law.*
- 4. The CIT (Appeals) failed to appreciate that the misreading of the business structure of the Appellant as well as further misreading of the MOU would vitiate the decision rendered in sustaining the assessment of licence income under the head 'income from house property' and ought to have appreciated that the principles laid down by the Apex Court referred to in her appellate/impugned order were completely distorted while vitiating the tangential findings for sustaining the assessment of licence income under the head 'income from house property'.*
- 5. The CIT(Appeals) failed to appreciate that the consistency of reporting of such income and the assessment of such income in the earlier assessment years was completely overlooked and brushed aside.*
- 6. The CIT(Appeals) failed to appreciate that the entire computation of taxable total income on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the shifting of head of income to tax the licence income while rejecting the expenses incurred for earning such income was bad in law and wholly unjustified.*
- 7. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.*
- 8. The Appellant craves leave to file additional grounds/arguments at the time of hearing.*

3. The brief facts of the case are that the assessee company is engaged in the business of running a hotel. The assessee had constructed a hotel at Trivandrum in the year 2008 and further operated the hotel up to 31.07.2009. But, from 01.08.2009, the assessee had entered into a license agreement with M/s. Oriental Hotels Ltd., (Taj Group of Hotels) under which, the Oriental Hotels was given a license to operate hotel for a period of 40 years with a right to renew the agreement for further 30 years on revenue sharing basis. The assessee has considered revenue received from licensing the hotel to M/s.Oriental Hotels Ltd., under the head 'Income from business of profession'. The AO was not convinced with the explanation furnished by the assessee and according to him, as per the terms of 'Memorandum of Understanding' (MoU) between the assessee and Oriental Hotels Ltd., the assessee has let out a fully furnished hotel accommodation and hence income received from letting out property is nothing but rent, which is assessable under the head 'Income from House Property'. To arrive at such conclusion, the AO has referred to the Memorandum of Association of the assessee company and noted that the main object of the assessee is to run the hotel and not letting out

property for earning rental income. Therefore, by referring to the decisions of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd., vs. CIT, (2015) 56 taxmann.com 956 and Rayala Corporation (P) Ltd., vs. ACIT, 72 taxmann.com 149, held that the main object of the assessee was not to earn income from letting out its properties. Therefore, the license agreement between the parties was nothing but an agreement for letting out the premises and accordingly, even though the revenue has been shared in terms of percentage of gross revenues derived from running a hotel, the license fees does not include all the streams of revenue earned by M/s.Oriental Hotels Ltd. Therefore, he opined that income derived from licensing the hotel to Oriental Hotels Ltd., is nothing but rental income which is assessable under the head 'Income from House Property' and accordingly by following decision of ITAT, Cochin Bench in the case of Palmshore Hotels (P.) Ltd vs. ACIT, (2012) 28 taxmann.com 156, assessed the income derived from letting out hotel premises under the head 'Income from other sources'.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the

assessee reiterated its submissions made before the AO and argued that it has licensed a fully furnished five star hotel comprising of 125 guest rooms on revenue sharing basis and hence revenues derived from leasing, to run a hotel is assessable under the head 'Income from business or profession' but not under the head 'Income from house property', as considered by the Id.AO. The assessee further submitted that the decision relied upon by the AO in the case of Palmshore Hotels (P) Ltd., has been reversed by the Hon'ble High Court of Kerala and held that license fee received for giving hotel with furnitures and fixtures to a company for running hotel for a specified period was 'business income' and not 'income from house property'. The Id.CIT(A) after considering the relevant submissions of the assessee and also by following the decisions of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd., vs. CIT, and Rayala Corporation (P) Ltd., vs. ACIT, *supra*, held that income earned by the assessee on account of license fee is not out of any business activity being carried on by the assessee himself, but merely through the exploitation of the property being the owner of the property and hence said license fee is assessable under the head 'income from house property'. The Id.CIT(A) has discussed the issue in light of

various decisions and MoU between the parties and held that although the assessee's main business activity was to run a hotel, but the assessee has ceased to carry on any business activity in respect of said hotel, upon signing the MoU with Oriental Hotels Ltd., and hence, it cannot be said that the assessee has carried out the business activity of running a hotel to consider license fee under the head 'income from business or profession'. Being aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id.AR for the assessee submitted that the Id.CIT(A) had erred in confirming assessment of income earned by the assessee under Memorandum of Understanding with M/s. Oriental Hotels Ltd., under the head 'income from house property' as against income assessed under the head 'income from business or profession' without appreciating the fact that, the assessee has entered into a Memorandum of Understanding to run a hotel in collaboration with another company, which is having expertise in running and maintaining five star hotels. The Id.AR further submitted that the lower authorities were grossly erred in not considering the business structure of the assessee as per which, the assessee has constructed fully furnished five

star hotel with all amenities including license to run the hotel and further because of business exigencies, said hotel was licensed to another company to run for a period of 40 years on revenue sharing basis without any fixed rental income. Therefore, license fee received for licensing hotel cannot be considered as rental income to be assessed under the head 'income from house property'. In this regard, he relied upon the decision of Hon'ble High Court of Kerala in the case of Palmshore Hotels (P.) Ltd., vs. CIT, (2017) 252 taxman 191 (Kerala).

6. The Id.DR, on the other hand strongly supporting order of the CIT(A) submitted that facts brought out by the authorities clearly indicate that the assessee has leased out hotel premises for an annual rental income which was quantified on the basis of percentage of gross revenue earned by the lessor M/s. Oriental Hotels Ltd., and hence, merely because the nomenclature was changed in the Memorandum of Understanding and license fees was determined in a different manner, the nature of income which is assessable under the head 'income from house property' cannot be changed to another head of income.

7 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The solitary issue that came up for our consideration from the given facts and circumstance of the case is, whether license received for licensing a hotel to another company for running and maintenance is assessable under the head 'income from business or profession' as claimed by the assessee or assessable under the head 'income from house property' as considered by the Id.AO. The facts borne out from records clearly indicate that, the assessee was in the business of running and maintaining a five star hotel and for this purpose, it has constructed a five star hotel at Trivandrum. The said hotel was operated by the assessee itself for short period. Further, due to business exigency and also for effective management of hotel, the fully furnished hotel including license to run the hotel was handed over by way of 'Memorandum of Understanding' to M/s. Oriental Hotels Ltd (Taj group of hotels) on revenue sharing basis. As per the terms of MoU, the assessee has agreed to share revenue at the rate of 9% of the annual gross revenue subject to a minimum of Rs.1.75 crores per annum. From the above, it is very clear that the understanding between the parties is not a simple agreement for letting out of premises on

monthly fixed rent, but an arrangement for continuing the running business, which was earlier carried on by the assessee as its main business activity. Further, even after the hotel was licensed to another operator, the business model of the assessee was not changed. Therefore, we are of the considered view that AO as well as the Id.CIT(A) were erred in coming to the conclusion that the license fee derived by the assessee by licensing a fully furnished hotel to another company for operating said hotel for a period of 40 years, cannot be considered as rental income, which is assessable under the head 'income from house property'.

8. We, further, noted that the AO as well as the Id.CIT(A) have taken support from the decisions of the Hon'ble Supreme court in the case of Chennai Properties and Investments Ltd vs. CIT and Rayala Coporation (P) Ltd vs. ACIT, *supra*, to come to a conclusion that if the main objects of the assessee is to let out premises on rent, then income derived from letting out premises is assessable under the head 'income from business or profession'. We have gone through the reasons given by the AO as well as CIT(A) in light of the decision of the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd.

supra and found that the Hon'ble Supreme Court has considered the objects of the assessee in determining the nature of income, to consider under which head such income is assessable. Further, after considering the facts of those case, the Hon'ble Supreme court came to the conclusion that if the main object of the assessee is letting out a premises on rent, then such income is assessable under the head 'income from business or profession'. In this case, on perusal of main objects of the assessee, which was extracted by the Id.AO in his order on page 3, we find that clause-3 of main object specifies that the assessee is engaged in the business of 'to build, make construct, purchase, equip, maintain and improve, alter lease and work, etc., which means the main objects clause of the assessee company permits constructing a hotel and leasing them on rent. Even on this count, the conclusion arrived at by the AO and the CIT(A) is contrary to the law laid down by the Hon'ble Supreme Court in the case of Chennai Properties and Investments Ltd. Be it as it may. But, the case of the assessee is squarely covered by the decision of the Hon'ble High Court of Kerala in the case of M/s.Palmshore Hotels (P) Ltd vs. CIT, *supra*, where the Hon'ble High Court of Kerala has reversed the decision of ITAT, Cochin, which was heavily relied upon by the AO to justify his conclusion

to tax license fee under the head 'income from house property'. The Hon'ble High Court held that license fee received by an assessee for giving its hotel with furniture and fixture to a company for running a hotel for a specified period was assessable under the head 'income from business' and not under the head 'income from house property'. The relevant findings of the Hon'ble High Court of Kerala are as under:

“5. Having considered the submissions made, we feel that as held by the Apex Court in Sultan Brothers Pvt. Ltd. v. CIT (supra), each case has to be looked at from the businessman's point of view to find out whether the letting was the doing of a business or the exploitation of the property by an owner. This being the test indicated by the Apex Court, according to us, the controversy should be resolved in the context of the intention of the parties as reflected in the licence agreement and the nature of the respective obligations as contained in the licence agreement which is also placed on record.

6. The licence agreement is dated 11 th of December, 2000. It is stated that the licensor is desirous of appointing a hotel operator who would operate the hotel “inconformity with standards comparable to hotels of similar standard and standing and consistent with the facilities provided in hotels of similar class upon the terms and conditions” set out in the agreement. Thereafter, Article III of the agreement provides that the licensor covenants and agrees that the licensor shall permit the licensee to operate the hotel in accordance with the terms of the agreement. That the licence is granted authorising the licensee “to operate the hotel” is recited in several other provisions of the agreement. In Article VI, it is also stated that on expiry of the seven year period of agreement or on termination of the same, the licensee shall cease to have any right on the operation of the hotel and the licensor shall have full right to operate the hotel. Clause-1 of Item-IV of Article X entitles the licensor to inspect the operations of the hotel with a view to satisfy itself that the hotel is being operated in terms of the agreement and also to intimate observation, if

any, to the licensee. Similarly, Clause-2 of Item-V of Article XV, specifically provides that the membership of the hotel in the Federation of Hotel and Restaurant Association of India, Kerala Hotel and Restaurant Association etc. will be in the name of the licensor. Similarly, provision is also made to clarify that the provisions of the agreement shall not be construed as creating a partnership or joint venture or managing/selling agency or any other relationship except a licence. In Article XIV of the agreement, it is specifically provided that during the term of the agreement, the hotel shall be known as and designated by the logo and name Hotel Palmshore, which will be suffixed by the words “An Abad Beach Resort” —along with Abad logo. The provisions of the agreement also indicate that the licensor has the right of supervisory control in the manner in which the hotel is operated. All these, provisions of the agreement would, therefore, indicate that the licence that has been granted is that of a fully established running hotel authorising the licensee to operate the hotel for a specified period subject to the terms and conditions incorporated therein. Therefore, the license granted is that of a business. These facts would, therefore, clearly indicate that the intention of the parties as reflected in the agreement was to grant licence in respect of a running hotel, the income of which can only be income from business. Therefore, the Commissioner of Income Tax was fully justified in setting aside the order of assessment and holding that the income of the assessee was income from business and not income from house property. In that view of the matter, the order of the Tribunal is unsustainable and has to be set aside and we do so.”

9. In this view of the matter and by following decision of Hon'ble High Court of Kerala in the case of M/s.Palmshore Hotels (P) Ltd., we are of the considered view that, license fee received by the assessee for licensing a fully furnished hotel along with license to run the hotel is a business receipt, which is assessable under the head 'income from business or profession' but not a rental income, which is assessable under the head 'income from

house property'. Therefore, we are of the considered view that the AO as well as the Id.CIT(A) were grossly erred in assessing license fee under the head 'income from house property' and hence, we reverse the findings of the CIT(A) and direct the AO to assess license fee under the head 'income from business or profession' as claimed by the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced on 8th February, 2021 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 8th February, 2021.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |