

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 2725/DEL/2016 [A.Y 2011-12]

M/s Niyant Heritage Hotels [P] Ltd
Scindia Potteries Compound
Sarojini Nagar, New Delhi

Vs.

The I.T.O
Ward - 13(3)
New Delhi

PAN: AACCN 2476 Q
(Applicant)

(Respondent)

Assessee By : Shri Satish Khosla, Adv,
Shri Pankaj Jain, ITP

Department By : Shri Umesh Takyar, Sr. DR

Date of Hearing : 15.12.2021
Date of Pronouncement : 15.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the CIT[A]- 20, New Delhi dated 16.03.2016 pertaining to Assessment Year 2011-12.

2. At the very outset, the ld. counsel for the assessee stated that he is not pressing Ground Nos. 1, 3 and 5 and the same are dismissed as not pressed.

3. Ground No. 2 relates to the disallowance of Rs. 6,05,150/- made by the Assessing Officer.

4. Briefly stated, the facts relating to this grievance of the assessee are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction for interest on borrowed funds under section 24(b) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] amounting to Rs. 6,05,150/-. The assessee was asked to furnish documentary evidence with regard to the loan taken as the same was used for the acquisition of the said building situated at Jasola, Okhla industrial area, New Delhi.

5. The assessee explained that the loan has been taken from M/s Perfect Turner for the purchase of the property and filed loan confirmation. The submission of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the deduction under

section 24(b) of the Act cannot exceed Rs.1.50 lakhs and, accordingly, went on to make addition of Rs. 6,05,150/-.

6. The assessee carried the matter before the ld. CIT(A) but without success.

7. Before us, the ld. counsel for the assessee vehemently stated that the said property is a let out property which was purchased out of borrowed funds from M/s Perfect Turner and, therefore, interest paid by the assessee should be allowed as deduction.

8. Per contra, the ld. DR strongly supported the findings of the AO/CITA.

9. We have carefully considered the orders of the authorities below. The assessee may have purchased the property out of borrowed funds, but the onus is upon the assessee to demonstrate that the said borrowed funds have been fully utilized for purchase of the said property and further demonstrate that the payment of interest is in respect of the said borrowed funds. No documentary evidences were furnished before the

lower authorities nor before us. Therefore, we do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 2 is, accordingly, dismissed.

10. Ground No. 4 relates to the disallowance of Rs. 7,02,000/-.

11. Facts relating to this addition show that during the assessment proceedings, on perusal of the cashbook, the Assessing Officer noticed that cash has been shown to be withdrawn from the bank as under:

Sr. No.		Amount [Rs.]
1.	09/04/2010	2,50,000/-
2.	08/11/2010	2,00,000/-
3.	01/-3/2011	2,52,000/-
Total		7,02,000/-

12. The assessee was asked to explain the above introduction of cash entries in its books of account.

13. The assessee was asked to explain the above introduction of cash entries in its books of account. The assessee explained that the said amounts were withdrawals from the bank.

14. Submissions of the assessee were verified from the bank statement but from the perusal of the bank statement, the Assessing Officer found that no such cash withdrawals were made from the bank on the date of introduction of cash in the books of account. The AO, accordingly, made addition of Rs. 7,02,000/-.

15. The assessee carried the matter before the ld. CIT(A) but without success.

16. Before us, the ld. counsel for the assessee stated that though the cheques were issued for withdrawal of cash from bank and simultaneously entries were made in the cashbook but cash withdrawals were made subsequently, therefore, the dates do not match with the bank statement.

17. We have carefully perused the bank statement qua the date of cheque and date of withdrawal from the bank. We find force in the contention of the ld. counsel for the assessee. The entries have been made in the cash book on the date on which the cheque was issued but the same was presented in the bank at subsequent date and therefore, the withdrawal date from the bank is different from the entry date in the

cashbook. But at the same time, we do not find do not know whether on entry date in cashbook any benefit has been taken by the assessee in respect of cash in hand. We, therefore, remit this issue to the file of the Assessing Officer. The Assessing Officer is directed to verify whether on the date of entry the assessee has utilized the alleged withdrawal of cash for making the payment/investment or for any other purpose and if the AO does not find any utilization of cash, then the addition should be deleted. Ground No. 4 is allowed for statistical purposes.

18. Ground No. 6 relates to the disallowance of Rs. 22,09,066/- out of depreciation claimed.

19. While scrutinizing the balance sheet of the assessee, the Assessing Officer found that in Schedule 4 of Fixed Assets, the assessee has shown several properties and has claimed depreciation amounting to Rs. 22,09,066/-. The assessee was asked to justify its claim of depreciation.

20. The assessee explained that it is engaged in the business of hotelier and has paid rent in respect of the premises at Raj Niwas Palace, Dhoulpur. The said lease rent was paid to Shri Dushyant Singh, HUF.

21. The Assessing Officer was of the opinion that the assessee is claiming deduction on lease rent as expenditure and is also claiming depreciation on the said building. The Assessing Officer, accordingly, disallowed the claim of depreciation.

22. The Id. CIT(A) confirmed the disallowance.

23. Before us, the Id. counsel for the assessee vehemently stated that on the leased property in the assessment year 2008-09, the assessee has made substantial addition which was capitalized by it and on such capitalized expenditure, the assessee has claimed depreciation as per provisions of law. We are of the considered view that the assessee is eligible for claim of depreciation as per Explanation 1 Proviso 6 to Section 32 of the Act but, at the same time, it needs to be verified whether in the year of expenditure, the same was claimed as revenue expenditure or was capitalized by the assessee. The Assessing Officer is directed to verify the same and if he finds that the amount of addition was capitalized, the depreciation should be allowed. Ground No. 6 is allowed for statistical purposes.

23. Ground No. 7 relates to the disallowance of Rs. 7,41,482/- on account of building maintenance.

24. Under the head 'Administration and General Expenses, the Assessing Officer found that the assessee has claimed expenditure on account of building maintenance amounting to Rs.7,41,482/- and on perusal of the details, the AO noticed that the amount of Rs. 3,01,510/- was paid to M/s Pest Control on which tax was deducted at source at Rs. 6,845/-. Invoking the provisions of section 40(a)(ia) of the Act, the AO disallowed the entire expenditure of Rs. 7,41,482/-

25. When the matter was agitated before the Id. CIT(A), the Id. CIT(A) was not convinced with the submissions of the assessee and confirmed the disallowance.

26. Before us, the Id. counsel for the assessee stated that only payment made on account of M/s Pest Control was subject to TDS under section 194C of the Act and on which tax has been deducted at source and balance amount is petty expenditure incurred on day to day maintenance of the building.

27. On the other hand, the ld. DR supported the findings of the AO/CITA.

28. We have carefully considered the order authorities below. It is true that on payment of pest control expenses, the assessee has deducted tax at source and has fulfilled the conditions laid down in section 194C of the Act. To this extent no disallowance should be made.

29. In respect of balance, no details of day to day expenditure have been furnished before us. We, therefore, set aside the issue to the file of the Assessing Officer. The Assessing Officer is directed to furnish details of day to day expenditure on account of building maintenance and the AO is directed to verify the same in light of provisions of section 194C of the Act and decide the issue afresh as per the provisions of law. The assessee gets relief of Rs. 3,01,510/-. Ground No. 7 is partly allowed.

30. Ground No. 8 relates to the disallowance of depreciation of Rs. 14,00,674/-.

31. The Assessing Officer found that the assessee has claimed depreciation of Rs. 5,01,410/- on account of building on which depreciation of Rs. 22,09,066/- is disallowed and from the remaining depreciation, the Assessing Officer further disallowed Rs.14,00,672/- on the ground that the assets have been used for less than 180 days.

32. Disallowance was confirmed by the ld. CIT(A).

33. Before us, the ld. counsel for the assessee stated that the assessee is an hotelier and he is running a resort which has seasonal business but the resort is used for the entire year, and, therefore, the claim of depreciation cannot be restricted to 50%.

34. Per contra, the ld. DR supported the findings of the AO/CITA.

35. There is no dispute that the assessee is running a resort at Raj Niwas Palace, Dholpur. It is also not in dispute that being a tourist place, the occupancy is not throughout the year but only in seasons favourable to the tourists. Therefore, basis the revenue of some months, it cannot

be construed that the asset was used only for less than 180 days. We, therefore, direct the Assessing Officer to allow depreciation for entire year. Addition of Rs. 14,00,672/- is directed to be deleted. Ground No. 8 is allowed for statistical purposes.

36. In the result, the appeal of the assessee in ITA No. 2725/DEL/2016 is partly allowed for statistical purposes.

The order is pronounced in the open court on 15.12.2021 in the presence of both the representatives.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 15th December, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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