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आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 298 & 299/JP/2017
निर्धारण वर्ष/Assessment Years : 2012-13 & 2013-14

Geetanjali Hotels & Promoters Pvt. Ltd., 41, Sanjay Marg, Hathroi Fort, Jaipur-302001.	बनाम Vs.	ACIT/DCIT, Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG8756G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Adv.) &
Shri Devang Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Ms. Runi Pal (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 05/07/2022
उदघोषणा की तारीख/Date of Pronouncement : 26/09/2022

आदेश/ ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are two appeals filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-I, Jaipur [hereinafter referred to as (CIT(A)) both dated 23.02.2017 for the Assessment years 2012-13 & 2013-14 respectively. Since common issues are involved, both the appeals were heard together and disposed off by this common order.

2. First, we take up assessee's appeal in ITA No. 299/JP/2017 for the A.Y. 2013-14. The assessee has taken following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in law and on facts in enhancing the income by Rs. 1,69,70,854/- u/s 36(1)(iii) of the Act as against disallowance of Rs. 25,40,014/- made by ld. AO u/s 14A taking view that the advances made to subsidiaries for non-business purchases and out of interest bearing loans without considering the fact that these advances made in earlier years for business expansion.

2. That Ld. CIT(Appeals) has erred in confirming the addition made by the Ld. AO of Rs. 3,12,118/- in respect of interest on income tax refund despite of the fact that the assessee doesn't have any intimation even no updation in 26AS statement and the more important refunds are lesser then its claim, therefore, interest to the extent of Rs. 3,12,118/- couldn't be taken as income.

3. That the Appellant craves to add, amend, alter any other grounds or grounds of Appeal at the time of hearing of appeal."

3. Brief facts of the case are that the assessee company is engaged in the business of owning, running and managing hotels since 1996. Return of income for the assessment year 2013-14 was filed by the assessee on 31.10.2013 declaring total income of Rs. 52,03,990/-. The case was selected for the scrutiny assessment under CASS and assessment was completed determining total income of Rs. 90,39,480/- after making disallow u/s 14A and disallowing towards unpaid employees' contribution of ESI and PF.

4. Aggrieved by the order of the Assessing Officer the assessee preferred appeal before the Ld.CIT(A). The Learned CIT(A) has confirmed the action of the Assessing Officer and sustained the additions.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee has reiterated its arguments in written submission dated 31.09.2021 which are as under:-

"Brief General Facts: The appellant company is engaged in the business of owning, running and managing hotels since 1996. The assessee filed ROI declaring total income of Rs.52,03,990/-(PB 4-6). The case was selected for the scrutiny u/s 143(3) and assessment was completed determining total income of Rs.90,39,480/- after making disallow u/s 14A and disallowing towards unpaid employees' contribution of ESI and PF.

In the first appeal, the ld. CIT (A), however, on one hand completely disagreed with the disallowance made by AO u/s 14A and in place thereof, made an altogether new issue by examining the case under section 36(1)(iii) whereby theincome to the extent of Rs. 1,69,70,854/- was enhanced. The ld.CIT (A) issued a notice u/s 251(2) (Refer CIT(A) Pg-11) which was duly replied(PB 73-79),by the appellant however, feeling dissatisfied, the CIT(A) made the disallowance.Hence this appeal.

GOA 1: Rs.1,69,70,854/-: The ld.CIT(A) erred in disallowing interest expenses of Rs.1,69,70,854/- u/s 36(1)(iii).

Facts: The appellant company had made investments in AOP and subsidiaries in the earlier years which continues till this year. The closing balances of various investmentsas on 31.03.2013 are as follows.

S.No.	*Name*	*Amount Rs.*	*Nature*	*Remark*
1.	*Comfort Living Hotels Pvt. Ltd (CLHPL)(PB 41)*	*7,57,02,300/-*	*Investment*	*Wholly Owned Subsidiary Company*
2.	*Maharani Buildstate Pvt. Ltd (MBPL)(PB 41)*	*99,00,000/-*	*Investment*	*Wholly Owned Subsidiary Company*
3.	*Naveen Tak AOP(PB*	*3,82,10,700/-*	*Investment*	*Assessee is*

	41)			*member of AOP*

In addition to these investments the assessee also extended some loans & advances to its subsidiary companies namely Comfort Living Hotels P Ltd ("Comfort" or CLHPL for short) and Maharani Buildstate P Ltd. (MBPL for short) in earlier years. The total outstanding amount of all these loans as on 31.03.2012 was to the tune of Rs.12,92,18,600/- and as on 31.03.2013 was to the tune of Rs.14,25,61,600/-(PB-41).

The appellant company debited interest expenses amounting to Rs.3,79,32,100/-. During the course of assessment the AO was of the view that the income received by the assessee from investment made in the AOP is exempted and consequently applying sec 14A r.w Rule 8D disallowance of Rs.25,40,014/- was made by the AO.

However, during the course of appellate proceeding the CIT(A) took an altogether different view and disallowance u/s 36(1)(iii) was proposed u/s 251(2). It was submitted before the CIT(A) vide submission dated 21.02.2017(PB 73-79)that the investments made by the assessee are for the business purposes and in addition to this the assessee is also having sufficient interest free funds. However, feeling dissatisfied, the CIT(A) made disallowance u/s 36(1)(iii) by holding as under (Extract Only at Pg 23):

"Thus, in view of the factual matrix of the case and above referred judicial pronouncements, it is held that the appellant had made investment/advanced a sum of Rs. 15,00,83,600/- (26,63,74,600 – 8,56,12,800 – 3,06,078,200) to its subsidiaries companies/AOP out of its interest bearing borrowed funds and the appellant company could neither prove with evidences that the said investment/loans were made for the purpose of business of the appellant company and were made for business exigencies nor that the said investments/loans and advances were made out of its own interest free funds, as claimed by the appellant company.

It is noted that the appellant was paying interest at the average rate of 13% per annum on its secured/unsecured loans, therefore it would be appropriate to compute disallowance out of interest expenses claimed by the appellant @ 13%

of Rs. 15,00,83,600/-which amount to Rs. 1,95,10,868/-. Thus a sum of Rs.1,95,10,868/- is being disallowed u/s 36(1)(iii) of the Act as theses were not incurred for the purposes of the business of the appellant company. Consequently, the income of the appellant is hereby enhanced by a sum of Rs. 1,69,70,854/-(1,95,10,868 – 25,40,014).”

Hence this appeal.

Submissions:

1. Investments are made for business purposes: The investments made by the assessee in subsidiaries and AOP are as under:

S.No	Particulars of investments& investors	Amount Rs	Remarks
1	Equity shares of Comfort Living Hotels Pvt. Ltd.	7,57,02,300/-	Theco. has taken over running business and management of the Hotel in Delhi in FY 2003-04 (A.Y. 2004-05)which is commercially expedient and also evident from the financial statements of Comfort Living Hotels Pvt. Ltd. The ld AO has also accepted the same as commercial expedient investment and has not taken while disallowing exempt investment u/s 14A.(AO Pg 5-6)
2	Equity shares of Maharani Buildestate Pvt. Ltd.	99,00,000/-	The investment made in Maharani Buildestate Pvt Ltd is also commercially expedient as, the company has acquired commercial land at Delhi in anticipationof expansion of existing business of the appellant company in the year 2006-07. The AO has also accepted the same as commercially expedient investment and has not taken while disallowing exempt

			investment u/s 14A.(AO Pg 5-6)
3	*Investment in AOPs (PB 41)*	*3,82,10,700/-* *[Initial investment in* *F.Y 2012-13* *(A.Y 2013-14)]*	*The investment in the AOP is made to obtain the liquor contract in Rajasthan. The AOP was obtaining liquor contract in earlier years and as such, was commercial investment only.*
	Total	*12,38,13,000/-*	

1.1. Investment in CLHPL (PB-41): 1.1.1 The appellant company is in the business of owing, running and managing hotels since 1996 and operating two hotel properties in Jaipur. For further expansion of the business, the group was in search of acquiring new hotel property in Delhi. The Group identified one hotel property in Delhi and completed its due diligence in respect of title, operating licenses, business viability and financials. Having satisfied from various point of view, the Company finalized the deal after negotiation in AY 2004-05 and the Group has acquired this new Hotel situated at prime location in Delhi by way of company transfer and acquired the shares of M/s Comfort Living Hotels Pvt. Ltd. With the acquisition of shares, the Group became owner of the hotel property. Thus, the appellant company became holding company of that Company and shown its acquisition of shares as investment in its financial statements. The investments so made as Holding Company by the appellant company for business expansion, furtherance and purely commercially expedient and such takeover and acquisitions are most popular mode in corporate world.

1.1.2 The investment so made by the assessee was a business investment as the hotel so acquired was available at a very reasonable price and was at a prime location of south Delhi. There can be two modes for expanding a business. Either to wait till the existing business generated sufficient accumulated funds and then to invest the same in the new business or to get some borrowed funds from the market and out of these funds expand the business. The assessee

adopted second and more practical way to expand its business. As mentioned earlier the assessee company was already in the hotel business and after successfully running the renowned hotel at Jaipur namely Maharani Palace for last ten years, expanded its business out of Rajasthan and bought a running hotel in Delhi. The appellant company became holding company hence it cannot be said that this investment was not for the business purpose. The investment so made in adding one more hotel property at Delhi achieved multi-fold capital appreciation since acquisition and as and when, it shall be sold then obviously the entire long term capital gain shall be taxed in the hands of the assessee Company.

1.2 Investment in Maharani Buildstate Pvt. Ltd (PB-41): 1.2.1 The appellant company also made investment in M/s Maharani Buildestate Private Limited in the year AY 2006-07 of Rs. 99 lacs for acquisition of shares andthus became holding company by acquiring 99.9% shareholding. This investment was also made for taking up a real estate project in Delhi and in this endeavor, Maharani Buildstate Private Limited acquired some properties in Delhi. The company successfully completed its projects which fact is fully evidenced by the fact of whopping turnover of Rs.46 Crores in AY 2011-12(PB-97) and Rs. 54 Lakh in AY. 2012-13.

1.3 Capital Contribution in Naveen Tak AOP (PB-41): 1.3.1 As mentioned earlier the company is engaged in running hotels and bar & liquors are integral part of hotel business. Hence to get liquor contracts, the company became member of M/s Naveen Tak AOP. It's a matter of common knowledge that liquor contracts are allotted on a lottery basis and one cannot claim with certainty that the contract will be awarded and the business will be profitable. However, the fact is that the investments are purely business investment and the investment in AOP is to expand its business for obtaining liquor contract in Rajasthan. This investment is also made in earlier years and the AOP was obtaining contracts time to time.

1.3.2The ld. CIT(A) refused to accept the investment in the AOP for the business purpose on the ground that the M/s Naveen Tak AOP is having total capital balance as on 31.03.2013 of Rs.10,40,56,083/- and out of this capital Rs.9,11,75,100/- were invested in another AOP named M/s Ramesh Singh AOP. In this regards it is submitted that the AOPs are created for obtaining liquor licenses to get the liquor at cheaper prices and thereby increasing the margin.

If in a particular year the AOP is not successful to get any liquor contract then instead of keeping all the funds idle the Naveen TakAOP decided to invest the capital in some other AOP.

The investment in the AOPs is generally made in the month of Feb/March every year, as such, the actual outflow of funds is not for a whole year but for a small period. Further, the share of profit from the AOP represents share of profits from AOP not from partnership firm. As per Section 10(2A) only the share of profits form a firm governed by the Partnership Act is excluded from computation of total income. As such, the nature of income from the AOP does not comes under the category of "Exempt" income u/s 10 unlike share of profit from partnership firm. This is due to the fact that the AOP itself pay income tax on its income at Maximum Marginal Rate of tax. As such, the amounts received from the AOP does share of the Member after tax payment by the AOP at maximum marginal rate of tax and is not taxable again in the hands of the members as provided under provisions of Section 86 of the Income Tax Act. As such, the investment can't be taken in the category of exempt investment, of which income is exempt u/s 10.

1.3.3 The further allegation of the CIT(A) that M/s Naveen Tak AOP was not doing any business is completely wrong on the face of it as the ld.CIT(A) has himself (CIT(A) Pg-17) admitted that M/s Naveen Tak AOP got a sum of Rs.7,42,992/- in A.Y. 2012-13 and Rs.18,16,329/- in A.Y. 2013-14 in the form of rebate/commission in the subjected year. However, the profit of the AOP could be Rs.65,458/-in A.Y. 2012-13 and Rs.1,98,012/- in A.Y. 2013-14 but this fact is not having any bearing on the case of the assessee because in any business there cannot be guaranteed profits every year, as held in the case of M/s S.A. Builders Ltd. vs. CIT(A) & ANR (2007) 288 ITR 1 (SC)/[2007] 158 Taxman 74 (SC) (DPB 1-3)

" ..... that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profit. The IT authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman ....."

2. Supporting Case Laws - Covered Issue:

2.1 CIT vs Tulip Star Hotels Ltd. (2011) 16 Taxmann.com 335 (Delhi)(DPB 4-5) wherein it was held as under:

"2. A perusal of the orders passed by the Tribunal would reveal that it is noted by the Income-tax Appellate Tribunal that the assessee is in the business of owning, running and managing hotels. For the effective control of new hotels acquired by the assessee under its management it had invested in a wholly owned subsidiary, namely, M/s. Tulip Star Hospitality Services Ltd. On this ground, relying upon the judgment of the Supreme Court in the case of S. A. Builders Ltd. v. CIT (Appeals) [2007] 288 ITR 1 / 158 Taxman 74 the Tribunal has held that the assessee was entitled to the deduction of interest on the borrowed funds. The observations made by the Supreme Court in S. A. Builders Ltd.'s case (supra) were quoted by the Tribunal as under (page 10) :

". . . where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans."

3. In these circumstances holding it to be expenditure incurred for business the same was allowed under section 36(1)(iii) of the Income-tax Act by the Tribunal. The Tribunal has also held that this expenditure would be allowed even under section 57(iii) of the Act. Though there may be some controversy as to whether the aforesaid expenditure is allowable under section 57(iii) of the Act or not, we have no doubt, in our mind, that the expenditure incurred under the aforesaid circumstances would be treated as expenditure incurred for business purposes and was thus allowable under section 36 of the Act. Mr. O. S. Bajpai, learned senior advocate appearing for the assessee, has produced a copy of the memorandum of association of the assessee which, inter alia, specifies the following objects :

X X X X X

4. We are, thus, of the opinion that no question of law arises. These appeals are accordingly dismissed. "

The above decision has been affirmed by the Hon'ble SCvide order dated 30.04.2012. Kindly refer Addll. CIT vs Tulip Star Hotels Ltd. (2012) 21 Taxmann.com 97 (SC) (DPB 6)

2.2 CIT vs Reliance Communications Infrastructure Ltd. (2012) 21 Taxmann.com 118 (Bom HC) (DPB 7-10) wherein it was held that:

" Where the assessee, as in the present case, has significant interest in the business of the subsidiary and utilizes even borrowed money for furthering its business connection, there is no reason or justification to make a disallowance in respect of the deduction which is otherwise available u/s 36(1)(iii)"

2.3 CIT vs Phil Corporation Ltd. (2011) 14 Taxmann.com 58 (Bom)(DPB 11-14)

"The reasoning of the Tribunal that the overdraft was not operated only for investing in the shares of subsidiary company and the fact that it was also used for investment in the shares of the sister/subsidiary company to have controlover that company and, therefore, the element of interest paid on the overdraft was not susceptible of bifurcation and, therefore, the assessee was entitled to the deduction under section 36(1)(iii). [Para 11]Thus, the Tribunal was right in deleting the addition of Rs. 19,73,333. [Para 12]"

Hence in view of above facts it is evidently clear that investment in equity shares of subsidiaries andcapital contribution in AOP, are backed by commercial expediency and the endeavor of expanding of business has never been disputed by the ld. AO and even ld. CIT(A). Hence there should not be any disallowance of interest.

3. Loans and Advances Given to Subsidiaries:

3.1.1For Business Purpose only: The assessee extended loans and advances to its subsidiary companies CLHPL and MBPL in earlier years and the outstanding amount as on 31.03.2013 was to the tune of Rs.14,25,61,600/-(PB-41).These advances were admittedly made to the subsidiaries in earlier years. As already discussed, these subsidiaries are assessee's wholly owned subsidiaries therefore, the assessee was having deep interest therein therefore, advances were made for the purpose of business only.

3.1.2 Commercial Expediency proved: The facts are not rebutted that the assessee is having a deep interest in its subsidiaries and AOP in terms of

strong business connection and ownership rights. The ld.CIT(A) completely failed to bring on the record that these funds were not utilized by the CLHPL and MBPL for the purpose of business. The ld. CIT(A) confined his understating of commercial expediency on the amount of yearly profits only. He completely overlooked the multifold capital appreciation achieved by the assessee in form of increase in value of properties and brand value of the group.

3.1.3 Supporting Case Laws:

3.1.3.1 DCIT vs Enron India Ltd (2017) 82 taxmann.com 334 (Mum Trib) wherein it was held that: (Para-3.1)

"that the assessee has shown the commercial expediency and business needs to advance the loans to the subsidiary company for the reasons that the windmill installed by the subsidiary company were being used by the assessee for transmission of its electricity to the power grid of the Electricity Board for further distribution and to the ultimate customers. Further, the moment the installation of windmill was completed, the subsidiary company used to pay back the advances received by the assessee by borrowing funds from the banks and other financial institutions. Thus, impugned addition was to be deleted."

3.1.3.2 CIT vs Reliance Communication and Infrastructure Ltd. (2012) 21 taxmann.com 118 (Bom) (Para-9)

"The Assessing Officer in making a disallowance, pro rata, of the deduction claimed by the assessee under section 36(1)(iii) relied upon the judgment of the Bombay High Court in the case of Phaltan Sugar Works Ltd. (supra). In that case, a division Bench had observed that moneys borrowed were utilized in the business of a subsidiary of the assessee and not in the business of the assessee as such and that consequently the Tribunal was notjustified in holding that interest on loans borrowed for advances to the subsidiary was allowable under section 36(1)(iii). The view which has been taken by the division Bench in Phaltan Sugar Works (supra) has expressly now been overruled by the Supreme Court in the case of S.A. Builders Ltd. (supra). [Para 9]"

4. Not all the Loans are given in current year: 4.1 As mentioned earlier the assessee made investments in these ongoing concerns basis and at the time of investment both the firms were passing through a financial hardship. This is the reason the assessee could get the properties at a very reasonable price, hence for their revival both the companies were in a dire need of money and being a

holding company the appellant company advanced the money as and when required. The closing balances of loans and advances as on 31.03.2012 stood at 12,92,18,600 hence in this year the assessee advanced an amount of Rs. 1,33,03,000/- only.

4.2 No Disallowance in Past and later Years: Notably, almost the same parties from whom interest bearing loans were taken and the parties to whom interest free loans were given are continuing this year also. In the past also though the assessee has been making similar claim of interest paid however, no disallowance was ever made and the claim stood allowed. The facts and circumstances being same, there appears no special reason to take a departure. Similarly, in the later years also the appellant continues making payment of interest but no disallowances is reported. Kindly refer CIT v/s Sridev Enterprises (1991) 192 ITR 165 (Kar) /(1991) 59 Taxmann 439 (KAR) and CIT v/s Excel Industries (2013) 93 DTR 457/ 358 ITR 295 (SC)/ (2013) 38 taxmann.com 100(SC) (DPB 15-21)

5. Not whole amount represent the loans &advances: The appellant company had advanced interest free funds to the subsidiaries, as and when required by them which has been subjected by the ld. CIT(A) to disallowance u/s 36(1)(iii) by alleging that the interest bearing funds were given by way of interest free loans and advances to them. Assuming for a moment his allegation was correct yet however, alternatively, he has wrongly considered not only figures of such alleged interest free loans & advances to the subsidiaries but also the interest element, in as much as in some of the years, assessee had also debited the

amount of interest to their accounts, which has increased the total amount of the loans and advances to the debit of such subsidiaries. In other words, the total subjected amount of Rs.12.92 Cr. in A.Y. 2012-13 &Rs.14.25Cr. in A.Y. 2013-14consisted of the principal amount(which was actually taken interest bearing and was actually given interest free to the subsidiaries)and the other part was the accumulated amount of the interest which was debited to their accounts.

On the other hand, the appellant company had also simultaneously charged the interest from those parties and crediting the same to its income, had already paid the due taxes thereon. This fact is clearly evident from the TDS statement in Form 26AS available on the portal of the department (ITD) on the registered account of the appellant company. Kindly refer the following chart:

A.Y.	*Comfort Living Hotels P Ltd (Rs.)*	*Maharani Build Estate P Ltd (Rs.)*	*Total (Rs.)*
2008-09	*53,60,708*	*1,29,09,742*	*1,82,70,450*
2009-10	*90,49,875*	*1,33,43,775*	*2,23,93,650*
2010-11	*45,46,339*	*3,03,22,567*	*3,48,68,906*
Total	*1,89,56,922*	*5,65,76,084*	*7,55,33,006*
Less TDS	*24,63,929*	*72,93,236*	*97,57,165*
Net Amount	*1,64,92,993*	*4,92,82,848*	*6,57,75,841*

Thus, reducing such amount of interest debited to their account of Rs. 6.58Cr. the effective actual interest free advances to the subsidiaries stood as to Rs.6.34 Cr. in A.Y. 2012-13 & 7.67Cr. in A.Y. 2013-14 and not Rs.12.92 Cr. in A.Y. 2012-13 & 14.25Cr. in A.Y. 2013-14as wrongly considered by the ld. CIT(A).However, the ld. CIT (A) purportedly ignored this factual aspect and considered the entire Rs.12.92 Cr. in A.Y. 2012-13 &Rs.14.25Cr. in A.Y. 2013-14 for the purposes of making disallowance u/s 36(1)(iii).

6.Sufficient Interest Free Funds Available:

6.1 Without prejudice to the above, if it is assumed that the loans & advances given by the assessee to its subsidiaries has not been used for business purpose then also no disallowance is warranted as the assessee hadsufficient interest free funds availableas admitted by the CIT(A) also. The relevant financial extracts of the assessee are given herein under: (PB-34)

Particulars	*As on 31.03.2013*	*As on 31.03.2012*
	Amount (Rs)	*Amount (Rs)*
Reserve and surplus	*5,22,59,600/-*	*4,62,95,500*
Interest free loans from relatives	*3,06,78,200/-*	*1,43,17,300*
*Accumulated Depreciation**	*6,88,50,800/-*	

		6,57,29,900
Total	*17,67,88,600/-*	*15,13,42,700*

As against the availability of funds as above, the subjected amounts given to Company/AOP were of Rs.14.25 Cr. only(PB 41).

6.1.1Loans & Advances are given out of interest free funds:as discussed in forgoing paras the assessee was having total interest free funds to the extent of Rs.17.67 Crores whereas total loans given to subsidiaries were Rs. 14.25 Crores only and if amount of interest charged is further reduced from this amount (as discussed in para 3.3) it comes to Rs. 7.37 Cr. (14.25 Cr. –6.88 Cr.) only. Hence the impugned disallowance deserves a complete allowance on this ground alone.

6.1.2Depreciation is also Interest Free Fund:The availability of these interest free funds have been admitted by the ld.CIT(A) and AO both.However, the ld.CIT(A) refused to admit the amount of accumulated depreciation as a part of interest free funds or funds available with the assessee. This is misconception on the part of the ld.CIT(A) that the amount of accumulated depreciation is not a part of interest free funds. It is submitted that depreciation is nothing but an estimated charge created by the assessee on its profit and depreciation being a non-cash item does not result in (cash) outflow of the funds hence the availability of the same cannot be denied. This position has been repeatedly affirmed in various decisions.

6.3Supporting Case Laws:

6.3.1 CIT vs Reliance Industries Ltd. (2018) 161 DTR 420 (Bom.) (DPB 22-23)affirmed by Hon'ble SC in CIT vs Reliance Industries Ltd. (2019) 410 ITR 466 (SC), wherein the HC held that:

"Appeal (High Court)—Substantial question of law—Interest on borrowed capital—Net profit after tax and before depreciation exceeded not only the differential/incremental loan given to subsidiaries during the year but also exceeds the total interest-free loans given to the subsidiaries as on 31st March, 2003—A presumption would arise that the investment would be out of the interest-free funds generated or available with the company—If the Tribunal

had allowed deduction and followed the earlier view and on facts, then, there is no perversity when nothing contrary to the factual material was brought on record by the Revenue—No substantial question of law arises from such a view of the Tribunal"

6.3.2 CIT vs Reliance Utilities and Power Limited (2009) 313 ITR 340 (Mum)/ (2009) 178 Taxmann 135 (Bom)-(DPB 34-35)

In this case the appellant company claimed the availability of interest free funds in the form of Share Capital (Rs.180 Crores), Reserves and Surplus (Rs.120.80 Crores) Depreciation Reserve (95.39 Crores), hence total availability of Rs.398 Crores was claimed. The Hon'ble High Court decided the matter by holding as under:

"If there are funds available both, interest-free and overdraft and/or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments. In the instant case said presumption was established considering the findings of fact, both by the Commissioner (Appeals) and the Tribunal. [Para 10] In view of above, the instant appeal was to be dismissed. [Para 11] "

6.3.3 SP Jaiswal Estate P Ltd vs ACIT (2013) 29 taxmann.com 221 (Kolkata Trib) (TM)(DPB 36-39)

"It was also noted that in the current year itself, the assessee has earned a profit of Rs. 3,50,51,698, and when amounts of Rs. 5,10,399 towards prior period expenses as also of Rs. 1,86,44,232 towards non-cash expenses in the nature of depreciation is added thereto, the total cash profitsaggregate to Rs. 5,31,85,591. This amount is far more than the total advances of Rs. 3,55,25,833. On this factual matrix, and applying the presumption as laid down by the High Court in Reliance Utilities & Powers Ltd. (supra) one has to proceed on the basis that the entire interest free advances were given out of the interest bearing funds available to the assessee. No part of the borrowed funds could be said to have been diverted as non-interest bearing advances to the subsidiary companies. For this short reason alone, there is no room for any disallowance of interest paid on borrowings, on account of grant of interest free advances to the subsidiary companies, on the facts of this case. The Commissioner (Appeals) was indeed in error in holding that the assessee did

not have sufficient own funds to advance the interest free advances to the sister concerns. [Para 9] ”

6.3.4CIT v/s Ram Kishan Verma (2016) 132 DTR 107 (Raj.)/[2015] 64 taxmann.com 358 (RAJ HC) (DPB40-43) holding as under:

“12. As far as the disallowance of interest is concerned, admittedly the assessee had an opening capital of Rs. 5,70,74,967/- of his own and the advances, if at all, being interest free, is to the extent of Rs. 98,93,950/- which is far below the capital of the assessee and, therefore, the tribunal has rightly come to the conclusion that to the extent of his own capital the assessee could advance money without interest for business expediency or/and relatives, and none can be forced to charge interest. It is also noticed by the lower authorities that assessee earned bank interest to the extent of Rs. 24,48,843/- out of which he paid total amount of Rs. 10,99,099/- to the bank

against loan and over draft, and it is out of the amount which has been paid by the assessee at 10,99,099/- that the AO has disallowed the interest.

13. Taking into consideration the fact as noticed hereinabove, in our view as well, when there was no agreement to charge interest from the persons to whom the assessee advance short term loan/advance, the AO could not disallow part of interest. It is also an admitted fact, as observed by the tribunal, that the AO was not able to pin pointedly come to a definite conclusion that how interest bearing loans has been diverted towards interest free advances and since the AO was not able to prove nexus between interest bearing loans vis-à-vis interest free loans/advances, therefore, in our view as well, once the AO was not able to come to a definite conclusion as to nexus having been established about interest bearing loans having been diverted towards interest free loans/advances, and such being a finding of fact based on application of evidence, in our view no substantial question of law arise on this question as well. It can be observed that this court in similar circumstances and on identical facts, when the capital of the partner/proprietor being more than the interest free short term advances, has in the case of CIT v/s M/s. Vijay Solvex Ltd. (2015) 274 CRT (Raj.) 384 while relying on the judgments rendered in (a) S.A. Builders Ltd. V/s CIT (2007) 288 ITR 0001 (SC); (b) Munjal Sales Corporation v/s CIT (2008) 298 ITR 298 (SC) ; (c) CIT V/s Radico Khaitan Ltd. (2005) 274 ITR 354; (d) CIT v/s Dalmia Cement (Pvt.) Ltd. (2002) 254 ITR

377; (e) CIT v/s Britannia Industries Ltd. (2006) 280 ITR 525; and (f) CIT v/s Motors Sales Ltd. (2008) 304 ITR 123 (Allahabad), held as under:-

x---------------x----------------x----------------x-------------------x---------x

14. Therefore, the finding reached by the Tribunal is essentially a finding of fact based on the appreciation of the evidence, and we find no perversity or infirmity in the order impugned, and no question of law arises out of the order of ITAT."

6.3.5 Also refer CIT v/s Radico Khaitan Ltd. (2005) 194 CTR 451/274 ITR 354 (All) (HC) held that:

"Business expenditure – Interest on borrowed capital – Interest free advances to sister-concern – Tribunal having found on facts that assessee had sufficient funds in the form of capital reserve and surplus other than the borrowed funds, assessee was entitled to full allowance of interest on borrowed money."

6.3.6 Godrej & Boyce Manufacturing Co. Ltd. v/s DCIT & Anr. (2017) 151 DTR 0089 (SC) /[2017] 81 taxmann.com 111 (SC) (DPB 44-46)

6.3.7 CIT v/s Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Mum)/ [2009] 178 Taxman 135 (Bombay)(DPB 34-35),

"The facts of that case were that the Assessee viz. M/s Reliance Utilities and Power Ltd. had invested certain amounts in Reliance Gas Ltd. and Reliance

Strategic Investments Ltd. It was the case of the Assessee that they themselves were in the business of generation of power and they had earned regular business income therefrom. The investments made by the Assessee in M/s Reliance Gas Ltd. And M/s Reliance Strategic Investments Ltd. were done out of their own funds and were in the regular course of business and therefore no part of the interest could be disallowed. It was also pointed out that the Assessee had borrowed Rs.43.62 crores by way of issue of debentures and the said amount was utilised as capital expenditure and inter-corporate deposit. It was the Assessee's submission that no part of the interest bearing funds (viz. Issue of debentures) had gone into making investments in the said two companies. It was pointed out that the income from the operations of the Assessee was Rs.313.53 crores and with the availability of other interest free funds with the Assessee the amount available for investments out of its own funds were to the tune of Rs.398.19 crores. In view thereof, it was submitted

that from the analysis of the balance-sheet, the Assessee had enough interest free funds at its disposal for making the investments. The CIT (Appeals) on examining the said material, agreed with the contention of the Assessee and accordingly deleted the addition made by the Assessing Officer and directed him to allow the same under the provisions of the Income Tax Act, 1961. The Revenue being aggrieved by the order preferred an Appeal before the ITAT who upheld the order of the CIT (Appeals) and dismissed the Appeal of the Revenue. From the order of the ITAT, the Revenue approached this Court by way of an Appeal."

6.3.8 Hero Cycle P. Ltd vs. CIT (2015) 128 DTR 1/379 ITR 347 (SC) also directly supports the case of the assessee.

"In that case, the company had given Loans & Advances of Rs.34 lacs to its directors and charged interest @ 10% only, whereas it availed the loan @ 18% hence, disallowance was made by the AO saying that the money borrowed by the assessee can't be treated for the purposes of the business of assessee. Before the ld. CIT(A), the assessee demonstrated that there was a sufficient credit balance, while advancing loan to the directors and even that still there was a credit balance of Rs.4.95 lacs left. The ld. CIT(A) therefore, held that such loan was not given out of the borrowed funds and the interest liability in relation to the banks borrowing, had no bearing because the assessee had its own sufficient funds, which the assessee could advance and the AO should have established a nexus between the borrowing and the advancing for non-business purposes however, the AO failed to do so. Further appeal of the revenue was dismissed by the Hon'ble ITAT also. In further appeal, the High Court merely quoted its earlier judgement in CIT v/s Abhishek Industries ltd dated 04.08.16. In this factual background, it was held:

"Insofar as the loans to Directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the Bank account when the said advance of Rs. 34 lakhs was given. Remarkably, as observed by the CIT (Appeal) in his order, the company had reserve/surplus to the tune of almost 15 crores and, therefore, the appellant company could in any case, utilise those funds for giving advance to its Directors."

6.3.9 CIT v/s M/s. Vijay Solvex Ltd. (2015) 274 CTR 384 (Raj.)

"The AO un-wantedly stressed over the alleged absence of the commercial expediency behind giving of the subjected loans & advances in as much as, such a consideration was relevant only in a case where the interest free funds were given out of the interest bearing funds only and there was admittedly no availability of the interest free funds. In our case, such facts are not available and even otherwise the utilization of the funds was for commercial expediency in as much as the major utilization of the funds was towards capital investment in building for coaching, and partly in the mutual funds but income from both were duly taxed. It was not the case of AO that assessee diverted the funds to relatives etc. for personal purposes. "

In the case of SA Builders also, the decision was rendered in the context of diversion of the interest bearing funds to the interest free advances. The Hon'ble Rajasthan High Court in Ram Kishan Verma (Supra) has also taken a note and interpreted the decision of SA Builder (Supra) in the same manner and therefore, held that to the conclusion that to the extent of his own capital the assessee could advance money without interest for business expediency or/and relatives, and none can be forced to charge interest.

7. No Nexus Established:

7.1The law is well settled that before making disallowance u/s 36(1)(iii), the AO must have established a nexus between the interest-bearing funds and the interest free loans given. In the present case, the AO has completely failed to prove the nexus between the interest-bearing funds and the interest free loans given.

Alternative and without prejudice to the above

8. Credit wrongly given of shorter amount even though admitted:Pertinently, the ld. CIT(A), as per his own calculations, worked out the availability of the interest free fund with the assessee of Rs. 10.79 Cr. (at Pg-10) as against the claimed amount of Rs. 17.67 Cr. by reducing the amount of accumulated depreciation of Rs.6.88Cr. However, while computing the available interest free fund for the purposes of computation of the disallowance of interest, he allowed the credit of Rs. 8.56 Cr. only as against the amount contended by the CIT(A) himself of Rs.10.79 Cr. which, appears to be typing mistake only. He appears to have taken the figure of the preceding year of Rs. 8.56 Cr. wrongly as against the correct figure current year of Rs. 10.79 cr. Thus, as per the ld.

CIT(A)'s own version and theory (though disputed and not admitted) heworked out the excessive disallowance of interest on the amount of Rs. 2,23,25,000/- by giving a short credit to this extent on account of the interest free funds.The audited balance sheet of the Comfort for the year ended as on 31.03.2013 (A.Y. 13-14) clearly shows the total turnover of Rs. 6.22 Cr. (PB-98). Similarly, the company declared net income of Rs. 21.72 Lac and Rs. 51.10 Lac in AY 13-14 and 12-13 respectively.Accordingly, the amount of interest disallowance of Rs. 1.95 Cr. in A.Y. 2013-14 should be reduced.

9. Enhancement by CIT (A) u/s 251(2) is without his jurisdiction (board): At the outset it is submitted that the so called enhancement made by the ld. CIT (A) by making disallowance u/s 36(1)(iii) of the Act in relation to the claimed interestis completely without jurisdiction in as much as law is well settled that the CIT (A) cannot find new sources of income. The facts are evident and admitted that where the AO proceeded and applied his mind only on the disallowance made under the specific provisions of S. 14A which, operates into entirely different field and made disallowance holding that the utilization of the interest bearing borrowed funds towards the investment and the loans and advances, generating exempted income, was not allowable. The ld. CIT (A) on the other hand, completely replaced the disallowance so made by the AO u/s 14A by new disallowance u/s 36(1)(iii) of the Act, on the plea that the utilization of the interest bearing borrowed funds was not for business purpose

It is not denied that the subject matter of appeal before the ld. CIT (A) was only against the disallowance made by the AO u/s 14A and the bare reading of the entire assessment order does not show a single word whispered by the AO w.r.t application of S.36(1)(iii) or otherwise on the facts of present case. Thus, there is complete non application of mind by the AO on the aspect of allow ability of the claim of interest u/s 36(1)(iii).

10. Supporting case laws:

10.1CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)

10.2CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC)

10.3 CIT vs. Associated Garments Makers (1992) 197 ITR 350 (Raj)/(1992) 64 Taxmann 215 (RAJ HC)(DPB 47-48)

It was held under:

"6. We have given our thoughtful consideration to the rival contentions and have looked into the provisions of law.
7. X X X X X X

A perusal of ss. 246 to 251 makes it clear that any questions arising out of the assessment orders in an appeal by the assessee can be possible and wide powers are given to the appellate authority, but these powers are circumscribed to the assessment order in the matters arising thereof or a matter arising out of the proceedings, even the appellate authority can suo motu consider the questions arising thereof but there is no provision to go beyond the matter arising out of the proceedings before the assessing authority, more particularly for which separate provisions are made in the Act. The Tribunal had elaborately discussed the provisions of the Act and the case law on the subject and has rightly come to the conclusion that new sources not mentioned in the return or considered by the ITO are beyond the scope of powers of the AAC. The case relied on by the Learned Counsel for the petitioner that power of setting aside the assessment order remanding the case for reconsideration of the whole matter including the evasion by the assessee, is not applicable in the facts of the present case because the matter arising in that case was one which arose out of the proceedings before the ITO. The question was not about new and fresh material for the purposes of enhancement. On the contrary, the case is clearly covered by the decisions of the Supreme Court, CIT vs. Shapoorji Pallonji Mistry(supra) wherein it has been heldthat, "In an appeal filed by the assessee the AAC has no power to enhance the assessment by discovering new sources of income not mentioned in the return of the assessee or considered by the ITO in the order appealed against", and the case reported in CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (supra) wherein it has been held that, "It is not, therefore, open to the AAC to travel outside the record, i.e., the return made by the assessee or the assessment order of the ITO, with a view to finding out new sources of income and the power of enhancement under s. 31(3) is restricted to the sources of income which have been the subject-matter of consideration by the ITO from the point of view of taxability". Their Lordships considered the meaning of the word 'consideration' and held that, "'Consideration' does not mean, 'incidental' or 'collateral' examination of any matter by the ITO in the process of assessment, therefore, there must be something in the assessment order to show that ITO applied his mind to the particular subject-matter or the

particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection". In the instant case, the AAC has, after issuing notice, himself considered the new material and has gone into new sources of income the consideration of which he had no jurisdiction.
8. In fact, we fail to understand as to why when the order was brought to the notice of the Commissioner himself proceeded into direction when he had ample powers under other provisions of this Act. There are various other provisions under the IT Act which can be evolved in cases of escaped income or such situation where the new sources had been left to be considered, but that would not give powers to the AAC to transgress his jurisdiction. We, therefore, find no case for reference and the Reference Application is rejected."

In the above case the AO made the disallowance of the claim of interest paid u/s 36 (1) (iii) of the Act. However, the ld. CIT(A) have made enhancement of income of Rs. 3.24 Lac u/s 2 (22) (e) and of Rs. 97,303 u/s 2(24) (iv) and also of cash credit of Rs. 1.32 Lac u/s 68. In this context, the above decision was rendered.

The ratio laid in the above case squarely apply on the present case also in as much as here also, whereas the AO may disallowance u/s 36 (1) (iii) of the Act. Though the AO and CIT (A) both dealt with the issue relating to the interest but in any case, they applied altogether different provisions of the Act and each provision has got his own significance operating in different fields and provides for disallowance/ income hence cannot be intermixed/ inter changed to justify the action of the ld. CIT u/s 251 (2) of the Act.

10.4 CIT Vs. Sardari Lal & Co. (2002) 120 Taxman 595 Delhi (DPB 49), which is a decision rendered by larger bench and also examined the earlier decision given in the case of CIT Vs. Union Tyres (1999) 240 ITR 556 (Del) and held that "having considered various decisions of the High Courts, as well as the Supreme Court, it is inevitable that whenever the question of taxability of income from a new source of income is concerned which had not been considered by the Assessing Officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 and section 263, if requisite conditions are fulfilled. It is inconceivable that in the presence of such specific provisions a similar power is available to the first appellate authority. Accordingly, the matter was disposed of."

10.5 Hari Mohan Sharma Vs. ACIT (2019) 71 ITR 18 /[2019] 110 taxmann.com (Delhi – Trib.) (DPB 50-52) wherein it was held:

"The present case only issue considered and discussed by the assessing officer is with respect to claim of the assessee u/s 54F of the act which was rejected after inquiry and further claim alternatively made u/s 54 of the act was also rejected relying up on the decision of the Honorable Supreme court. The issue of verification of capital gain was not the issue which was at all dealt with by the assessing officer, or even a question of verification made by ld AO. There was no inquiry made by the ld AO on the issue of capital gain shown by the assessee. The ld AO has not at all considered the issue of sales consideration received by the assessee on sale of house as an issue of dispute before him. Therefore, according to us, ld CIT (A) could not have made enhancement on the issue holding that capital gain shown by the assessee itself is not in accordance with the law and given a finding that no capital gain has accrued to the assessee."

It was held as under"Appeal [CIT (A)]—Power to enhance income—Scope—CIT(A) cannot enhance income on a source not subject matter of assessment before AO—AO having demit exemption under s. 54, CIT(A) had no Jurisdiction to declare sale as bogus and make addition under s. 68."

Thus, the ld. CIT (A) has clearly exceeded his jurisdiction. Thus the CIT(A) has clearly exceeded his jurisdiction. Consequently, the enhancement made by him of Rs. 1.69 Cr , deserve to be deleted."

6. In first appeal the CIT(A) has confirmed the action of the AO by observing as under:-

> *"(iii) I have duly considered the submissions of the appellant assessment order and the material placed on record. The appellant has not filed any document including Form No. 26AS in support of its claim. It is noted from the individual transaction statement obtained from the AO that a sum of Rs. 2,82,450/- (payment dated 18.05.2012) and Rs. 1,46,768/- (payment dat 23.06.2012) on income tax refund for AY 2009-10 and*

2011 respectively totaling to Rs. 4,29,218/- was received by the appellant company during the year under consideration. The appellant has shown only interest income on income tax refund at Rs. 1,17,100/- only. It is trite law that income of a year has to be determined correctly in view of the provisions of the Act. It is an undisputed fact that the appellant has received income of Rs. 4,29,218/- on income tax refunds and thus the same is to be included in the total income of the appellant. It does not make any difference whether the appellant was aware of said interest income on income tax refund or not while determining the total income of the appellant.

(iv) In view of the above discussion, it is held that the AO was justified in making addition of Rs. 3,12,118/- on account of interest income on income tax refund to the income of the appellant. Hence, the addition of Rs. 3,12,118/- made by the AO is hereby sustained. Thus, this ground of appeal is hereby rejected."

7. Apropos Ground No. 1 of the assessee for the assessment year 2012-13, we have heard both the parties and perused the materials available on record. It is noted from the record that the assessee company is engaged in the business of Hotel Industries and Toll Tax Collection. During the course of assessment proceedings, the AO noted that the assessee company had debited the interest expenses amounting to Rs.4,23,15,400/-. During the course of assessment, the AO was of the view that the income received by the assessee from investments made in AOP is exempted and consequently he applied the Section 14A r.w.rule 8D made disallowance of Rs.16,67,662/-. In first appeal, the ld. CIT(A) taking into consideration the assessment and submissions of the assessee enhanced the income of the assessee amounting to Rs.1,74,18,626/- (Rs.1,90,86l,288 minus Rs.16,67,662 vide para (xiv) of his order by observing as under:-

(xiv) It is noted that the appellant was paying interest at the average rate of 13% per annum on its secured/unsecured loans, therefore it would be appropriate to compute disallowance out of interest expenses claimed by the appellant @ 13% of Rs. 14,68,17,600/- which amount to Rs. 1,90,86,288/-. Thus a sum of Rs.1,90,86,288/- is being disallowed u/s 36(1)(iii) of the Act as theses were not incurred for the purposes of the business of the appellant company. Consequently, the income of the appellant is hereby enhanced by a sum of Rs. 1,74,18,626/-(1,90,86,288 –16,67,662).”

8. During the course of hearing, the ld. AR of the assessee has lucidly submitted the details of the investment made in AOP by the assessee company. The investments made by the assessee in subsidiaries and AOP are as under:-

S.N.	Particulars of investments and investors	Amount
1.	Equity Shares of Comfort Living Hotels (P) Ltd.	7,57,02,300
2.	Equity Shares of Maharani Buildestate (P) Ltd.	99,00,000
3.	Investments in AOPs (PB 41)	3,19,26,800 (initial investment in A.Y. 2012-13)

It is also noted from the record that the assessee was having total interest funds to the tune of Rs.15.13 crores whereas total loan given to subsidiaries were to the tune of Rs.12.92 crores (PB 41) only and if the amount of interest charged is further reduced from this amount then it comes to Rs.6.35 Crores (Rs.12.92 Cr. Minus Rs.6.57 Cr.) which is more than the disallowance confirmed by the ld. CIT(A) amounting to Rs.1,74,18,626/-. The decisions relied upon by the ld. AR of the assessee finds favour in this case. Since, the assessee has not challenged the finding of the ld. AO. The addition made by the ld. AO is confirmed and that of the ld. CIT(A) is reversed. In this view of the matter, we

feel that the ld. CIT(A) has exceeded his jurisdiction and the enhancement made by the ld. CIT(A) deserves to be deleted . Thus Ground No. 1 of the assessee is allowed.

9. Now we take up the Ground No. 1 of the assessee in ITA No. 299/JP/2017 for the assessment year 2013-14 wherein the ld. CIT(A) has enhanced the income of the assessee by Rs.1,67,70,854/- u/s 36(1)(iii) of the Act as against disallowance made by the AO of Rs.25,40,014/- u/s 14A of the Act.

10. We have heard both the parties and perused the materials available on record. The Bench noted that the facts and circumstances of the case are similar and it is not imperative to repeat the same facts. Therefore, the decision taken by this Bench in ITA No. 298/JP/2017 for the assessment year 2012-13 in Ground No. 1 of the assessee shall apply mutatis mutandis. Thus Ground No. 1 of the assessee is allowed.

11. Apropos Ground No. 2 of the assessee for the assessment year 2013-14, we have heard both the parties and perused the materials available on record. During the course of assessment proceedings, the AO noted that the assessee had received income tax refund amounting to Rs.4,29,218/- but the assessee in the income tax return had shown interest amount of Rs.1,17,100/- only. During the course of assessment proceedings, the assessee could not dispel the doubt raised by AO about the interest amount of Rs.1,17,100/- . Hence, the AO made of Rs.3,12,118/- to the total income of the assessee. In first appeal, the ld. CIT(A) confirmed the action of the AO. During the course of hearing, the ld. AR of the assessee has not advanced any submissions or arguments controverting the findings of the ld. CIT(A) as to the addition sustained by the ld. CIT(A) amounting to Rs.3,12,118/-. In this view of the matter, the ground No. 2 of the assessee is dismissed.

In the result, the appeals of the assessee in ITA No. 298/JP/2017 is allowed and that of ITA No. 299/JP/2017 is partly allowed.

Order pronounced in the open Court on 26/09/2022.

Sd/-	Sd/-
(राठोड कमलेश जयन्तभाई)	(एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 26/09/2022.
*Santosh
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Geetanjali Hotels & Promoters Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-2, Jaipur.
   DCIT, Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 298 & 299/JP/2017}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar