

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4387/Del/2017
Assessment Year: 2012-13**

ACIT, Circle-25(2),
New Delhi.

vs. Tulip Star Hotel Ltd.,
Kamal Cinema Commercial Complex,
Block A & B, Sufdarjung Enclave,
New Delhi.

PAN : AAACC1072F
(Appellant)

(Respondent)

Appellant by : Sh. Prakash Dubey, Sr. DR
Respondent by: Sh. Pratap Gupta, C.A.

Date of hearing: 25.08.2021

Date of order : 10.09.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 10.03.2017 passed by the Commissioner of Income Tax (Appeals)-13, New Delhi ("Ld. CIT(A)") in the cases of Tulip Star Hotel Ltd. ("the assessee") for the assessment year 2012-13, Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company and was engaged in the business of owning and managing the hotels in India at the relevant period. Assessee filed return of income for the assessment year 2012-13 on 27.09.2012 declaring a loss of Rs.71,37,326/-. During the course

of assessment, learned Assessing Officer noticed that the assessee claimed expenses amounting to Rs.3,61,28,155/- and when called upon to explain why the same shall not be disallowed in view of the fact that no business activity was carried out during the assessment year, the assessee pleaded that out of expenses of Rs.3,61,28,155/- appearing in Profit & Loss account, the expenses to the tune of Rs.2,90,35,248/- were *suo moto* added back by the assessee in its computation of income and, therefore, in fact, the assessee claimed expenses only to the tune of Rs.70,92,907/- for retaining its status as a company and for its continuous existence for running the day-to-day affairs of the company. According to the assessee, same includes expenses like salary, payment towards statutory funds, travelling and conveyance, communication, professional fee, vehicles etc. Learned Assessing Officer, however, did not agree with the submissions of the assessee and disallowed the entire expenses of Rs.3,64,03,451/- debited to the profit and loss account and assessed the income of the assessee at nil.

3. Aggrieved by the same, assessee preferred appeal before the Id. CIT(A) who by order dated 10.03.2017 deleted the disallowance of expenses holding that these expenses were required to be incurred for retaining the status of the company and allowable deduction even though no business activity was carried out in the relevant year. In this process, Id. CIT(A) placed reliance on the decision of Hon'ble jurisdictional High Court in the case of CIT Integrated Technologies Ltd. (ITA No.530/2011 – order dated 16.12.2011) and the view of the ITAT in the case of ITO vs. Mokul Finance Pvt. Ltd., 110 TTJ 445.

4. Revenue, therefore, aggrieved by such deletion of the disallowance came in this appeal contending that the assessee had paid to the

collaborators for expenses on services/premises which are clearly covered under the ambit of TDS provisions and that the assessee did not form any partnership firm with any of the collaborators and accordingly, payments made to them/revenue shared with them cannot be treated as share of profits in the absence of partnership firm. Learned DR places reliance on the orders of the authorities below.

5. It is submitted on behalf of the assessee that the grounds raised have no relation to the deletion of the disallowance and the Id. CIT(A) rightly followed the law laid down by Hon'ble jurisdictional High Court in the case of Integrated Technologies Ltd. (supra) and therefore, no interference is warranted.

6. We have gone through the record in the light of the submissions made on either side. It remains an undisputed fact that the assessee was incorporated on 10.09.2087, made investments in V. Hotels Ltd, which had acquired Centaur Hotel in Mumbai from the Government intending to revive the business of such hotels, but in view of legal dispute with regarding to Centaur Hotel and also on account of economic slowdown, the assessee could not start running of hotel, but, however, to keep the status of the company, the assessee had to incur expenses in the shape of salary of few key personnel, payments made towards statutory funds, communications, professional fees etc.

7. In these circumstance, Id. CIT(A) while following the decision of Hon'ble jurisdictional High Court in the case of Integrated Technology Ltd. (supra) and also order of coordinate Bench of this Tribunal in Mokul Finance Pvt. Ltd. (supra), granted relief on the ground that the expenses incurred for

retaining the status of the compare are allowable deduction, even though the assessee did not carry out any business activity during the assessment year. We do not find any illegality or irregularity in the reasoning given or conclusions reached by the Id. CIT(A) and as a matter of fact, the challenge of the Revenue also is non-specific. We, accordingly, uphold the order of the Id. CIT(A) and dismiss the grounds of appeal of the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 10th day of September, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 10/09/2021

'aks'

Sd/-

(K. NARSIMHACHARY)
JUDICIAL MEMBER