

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

Before Shri R.S.Syal, AM and Shri V.Durga Rao, JM

ITA Nos.5371 & 5803/Mum/2005 : Asst. Year 1999-2000 & 2002-2003

The Dy.Commissioner of Income-tax Range 3(1) Mumbai.	Vs.	M/s.Citizen Hotels Private Limited 911, Raheja Chambers, Nariman Point Mumbai - 400 021. PA No.AAACC2180L.
(Appellant)		(Respondent)

CO No.13 & 48/Mum/2006: Asst. Year 1999-2000 & 2002-2003

M/s.Citizen Hotels Private Limited 911, Raheja Chambers, Nariman Point Mumbai - 400 021.	Vs.	The Dy.Commissioner of Income-tax Range 3(1) Mumbai.
(Cross Objector)		(Respondent)

**Revenue by : Shri Sumeet Kumar
Assessee by : S/Shri K.Shivaram & Ajay R.Singh**

ORDER

Per R.S.Syal (AM) :

This batch of four appeals comprises of two appeals by the Revenue and equal number of cross objections by the assessee in relation to the assessment years 1999-2000 and 2002-2003. Since some of the issues raised in these appeals are common, we dispose them off by this consolidated order for the sake of convenience.

Assessment Year 1999-2000

2. The first ground of the Revenue's appeal is against the relief allowed by the learned CIT(A) in the calculation of disallowance u/s.14A. Ground numbers 2 and 3 of the assessee's cross objection are also on the same point. Briefly stated the facts of the case are that the assessee received dividend income amounting to Rs.7,57,755 which was exempt under the Act. The AO made the disallowance u/s.14A by holding that the interest expenditure of Rs.20,73,370 could not be attributed to the earning of taxable income. He, therefore, made disallowance for

this amount u/s.14A. Apart from that, part of managerial and other operative expenses was held to be not allowable as relatable to the dividend income. This amount was calculated at Rs.7,577 and the total disallowance was made at Rs.20,80,947. In the first appeal the learned CIT(A) allowed part relief.

3. After considering the rival submissions and perusing the relevant material on record it is noted that the assessee had earned dividend income in this year which was exempt from tax and hence the provisions of section 14A were applicable. The question of determination of the disallowable amount has been dealt with in detail by the Special Bench of the Tribunal in the case of *ITO Vs. Daga Capital Management Pvt. Ltd. [(2008) 119 TTJ (Mum) (SB) 289]*. The majority view in this case has held that the disallowance is to be worked out as per section 14A r.w. rule 8D. We, therefore, set aside the impugned order and restore the matter to the file of the Assessing Officer for computing the disallowable amount as per the guidelines laid down by the Special Bench. However, it is made clear that the disallowance under this section in the fresh proceedings should not exceed the original amount disallowed by the Assessing Officer in the present assessment order.

4. Ground No.2 of the Revenue's appeal is against the deletion of addition of Rs.6,45,958 being 10% of repairs and maintenance expenses. The Assessing Officer held that 10% of such expenses as capital in nature since the assessee was deriving the benefit of enduring nature. The learned CIT(A), following his own order for assessment year 1998-99, deleted this addition.

5. After considering the rival submissions we find that the Tribunal has decided this issue in assessee's favour in its order in ITA No.5370/Mum/05 by which the Departmental appeal has been dismissed. The copy of the order dated 26.3.2008 is available on record. Respectfully following the precedent we uphold the impugned order on this issue.

6. Ground No.1 of the assessee's cross objection about the challenging of reopening u/s.147 was not pressed by the learned AR. The same is therefore dismissed.

7. Ground No.4 is against non-adjudication by the learned CIT(A) on deduction u/s.80HHD. The learned A.R. submitted that if the second ground raised by the Revenue is dismissed, then this ground in the assessee's cross objection will become infructuous. In view of our above finding by which ground no.2 of the Revenue's appeal has not been allowed, we treat ground No.4 of the assessee's cross objection as infructuous.

8. The last effective ground about the charging of interest u/s.234A, 234B and 234C, being consequential, is disposed off accordingly.

Assessment Year 2002-2003

9. The first ground of the Revenue's appeal and the first ground of the assessee's cross objection deal with the disallowance u/s.14A. Both the sides have fairly conceded that the facts and circumstances of these grounds are *mutatis mutandis* similar to those of assessment year 1999-2000. Respectfully following the view taken hereinabove in the said earlier year, we set aside the impugned order on this score and remit the matter back to the file of the Assessing Officer for deciding afresh in accordance with the guidelines laid down by the Special Bench in *Daga Capital Management Pvt. Ltd. (supra)*.

10. Ground No.2 of the Revenue's appeal is against the deletion of addition of Rs.5,59,563 being 10% of repairs and maintenance expenses which has treated by the Assessing Officer as capital expenditure. Here also both the sides are agreeable that this ground is similar to ground No.2 of the Revenue's appeal for assessment

year 1999-2000. In view of our decision in an earlier para in the appeal for assessment year 1999-2000, we dismiss this ground of appeal.

11. Ground No.2 of the assessee's cross objection is in support of the order of the learned CIT(A) *qua* ground No.2 of the Revenue's appeal. In view of our finding given on ground No.2 of the Revenue's appeal, this ground has become infructuous.

12. Ground Nos.3 and 4 of the assessee's cross objection are as under:-

"3. The learned ITO/CIT(A) was erred in saying that explanation to section 73 is applicable and thereby treating loss of Rs.57004 on purchase and sell of shares of security as speculation loss same be allowed.

4. The learned ITO/CIT(A) as erred in not allowing the set off of carried forward losses of Rs.2878359/- same be allowed."

13. The learned Counsel for the assessee submitted that these issues were raised before the learned CIT(A) vide ground Nos.5 and 6 in Form No.35 but were not adjudicated upon by the first appellate authority. It was prayed on behalf of the assessee that the ld. first appellate authority be directed to decide these grounds. The learned Departmental Representative also accepted this fact. In the light of these common submissions, we restore these issues to the file of CIT(A) for deciding them after allowing a reasonable opportunity of being heard to the assessee.

14. Ground No.5 of the assessee's cross objection about deduction u/s.80HHD is dismissed as infructuous in view of our not allowing ground No.2 of the Revenue's appeal.

15. The last ground about the charging of interest u/s.234A, 234B and 234C, being consequential, is disposed off accordingly.

16. In the result, appeals of the Revenue as well as cross objections of the assessee are partly allowed for statistical purposes.

Order pronounced on this 30th day of January, 2009.

Sd/-
(V. Durga Rao)
JUDICIAL MEMBER

Sd/-
(R.S.Syal)
ACCOUNTANT MEMBER

Mumbai : 30th January, 2009.

Devdas*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT concerned
4. The CIT(A) - XXVII, Mumbai.
5. The DR/ITAT, Mumbai.
6. Guard File.

TRUE COPY.

By Order

Assistant Registrar, ITAT, Mumbai.