

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President  
& Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 1091/KOL/2019  
Assessment Year: 2015-2016**

**Deputy Commissioner of Income Tax,.....Appellant  
Circle-8(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, 4<sup>th</sup> Floor,  
Kolkata-700069  
-Vs.-**

**M/s. Oberoi Hotels Pvt. Limited,.....Respondent  
4, Mangoe Lane, 6<sup>th</sup> Floor,  
Kolkata-700001  
[PAN: AAAC03408K]**

**Appearances by:**

*Shri Dhruvajyoti Roy, JCIT, for the Appellant  
Shri A.K. Gupta, F.C.A., for the Respondent*

Date of concluding the hearing : February 12, 2020  
Date of pronouncing the order : March 18, 2020

**O R D E R**

**Per Shri P.M. Jagtap Vice-President:**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-23, Kolkata dated 22.02.2019.

2. In Ground No. 1, the Revenue has challenged the action of the Id. CIT(Appeals) in restricting the disallowance of Rs.2,61,46,846/- made by the Assessing Officer under section 14A of the Act to Rs.62,67 lakhs.

3. The assessee in the present case is a Company, which is engaged in the business of running Hotels and providing technical services for operating Hotels in India and abroad. The return of income for the year under consideration was filed by it on 30.09.2015 declaring total income of Rs.18,27,65,610/-. In the said return, the dividend income of

Rs.16,42,75,442/- was claimed to be exempt by the assessee and a disallowance on account of expenditure incurred in relation to the said exempt income was offered to the extent of Rs.10,34,482/- as per section 14A of the Act. In the absence of separate books of account maintained by the assessee in relation to expenses incurred in relation to earning of exempt income, the disallowance offered by the assessee under section 14A at Rs.10,34,482/- was not found acceptable by the Assessing Officer. He invoked Rule 8D to work out the expenses incurred by the assessee in relation to the earning of the exempt income at Rs.2,71,81,828/- and made a further disallowance of Rs.2,61,46,846/- under section 14A.

4. The disallowance of Rs.2,61,46,846/- made by the Assessing Officer under section 14A read with Rule 8D was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), a fresh working was prepared and furnished by the assessee claiming that the common expenses incurred by it in relation to the exempt income by following an appropriate method would be Rs.67.27 lakhs. The said working furnished by the assessee for the first time before him was forwarded by the Id. CIT(Appeals) to the Assessing Officer for verification along with the additional evidence filed by the assessee. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer agreed that the quantum of expenses in relation to the exempt income as worked out by the assessee at Rs.67.27 lakhs was reasonable. Keeping in view this categorical finding given by the Assessing Officer in his remand report on verification of the working furnished by the assessee in the light of the relevant documentary evidence, the Id. CIT(Appeals) restricted the disallowance of Rs.2,61,46,846/- made by the Assessing Officer under section 14A to Rs.67.27 lakhs.

5. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As rightly

submitted by the Id. Counsel for the assessee, the revised working of expenses incurred in relation to the earning of exempt income as prepared by the assessee by following an appropriate method of allocation of common expenses was found to be fair and reasonable by the Assessing Officer after verification and keeping in view this categorical finding given by the Assessing Officer in his remand report, the Id. CIT(Appeals) restricted the addition of Rs.2,61,46,846/- made by the Assessing Officer under section 14A to Rs.67.27 lakhs. At the time of hearing before the Tribunal, the Id. D.R. has also not raised any material contention to dispute or challenge this relief allowed by the Id. CIT(Appeals), which is based on the categorical finding given by the Assessing Officer himself in the remand report submitted to the Id. CIT(Appeals) stating that the revised working of expenditure incurred by the assessee in relation to the exempt income as prepared by the assessee by following an appropriate method of allocation of common expenses was fair and reasonable. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue and upholding the same, we dismiss Ground No. 1 of the Revenue's appeal.

6. In Ground No. 2, the Revenue has challenged the action of the Id. CIT(Appeals) in accepting the ALV of the assessee's house property at Rs.3,60,000/- thereby rejecting the fair market rent of Rs.1,75,69,200/- adopted by the Assessing Officer as the ALV.

7. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As agreed by the Id. Representatives of both the sides, a similar issue was involved in assessee's own case for the earlier years and the same has been consistently decided by the Tribunal in favour of the assessee vide various orders passed for the said years. In one of such orders recently passed on April 12, 2019 for A.Y. 2010-11 in I.T.A. No. 2000/KOL/2016, a

similar issue has been decided by the Tribunal in favour of the assessee vide paragraph no. 9 of its order, which reads as under:-

*"9. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the ld. D.R. has relied on the order of the Assessing Officer in support of the revenue's case on this issue, it is observed that the addition on this issue was made by the Assessing Officer by following the stand taken in assessee's own case for the earlier years and the ld. CIT(Appeals) has deleted the said addition by relying on the decision of the Tribunal in assessee's own case on a similar issue for the earlier years, i.e. A.Ys. 2007-08, 2008-09 and 2009-10. The ld. CIT(Appeals) thus has followed the decision of the Tribunal on the similar issue rendered in assessee's own case for the earlier years and as submitted by the ld. Counsel for the assessee, the said decision of the Tribunal has been upheld by the Hon'ble Calcutta High Court. This issue thus is squarely covered in favour of the assessee by the decision of this Tribunal rendered in assessee's own case for the earlier years, which has been upheld by the Hon'ble Calcutta High Court and respectfully following the same, we uphold the impugned order of the ld. CIT(Appeals) giving relief to the assessee on this issue. Ground No. 2 is accordingly dismissed".*

8. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that A.Y. 2010-11, we respectfully follow the decision of the Tribunal rendered for A.Y. 2010-11 vide order dated April 12, 2019 (supra) and uphold the impugned order of the ld. CIT(Appeal) giving relief to the assessee on this issue. Ground No. 2 of the Revenue's appeal is accordingly dismissed.

**9. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on March 18, 2020.

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(P.M. Jagtap)  
Vice-President)

*Kolkata, the 18<sup>th</sup> day of March, 2020*

Copies to : (1) Deputy Commissioner of Income Tax,  
Circle-8(2), Kolkata,  
Aayakar Bhawan, P-7, Chowringhee Square, 4<sup>th</sup> Floor,  
Kolkata-700069

**(2) M/s. Oberoi Hotels Pvt. Limited,  
4, Mangoe Lane, 6<sup>th</sup> Floor, Kolkata-700001**

- (3) Commissioner of Income Tax (Appeals)-23, Kolkata;  
(4) Commissioner of Income Tax- , Kolkata  
(5) The Departmental Representative  
(6) Guard File

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata

**Laha/Sr. P.S.**

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