आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL " C " BENCH, MUMBAI

सर्वश्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।
BEFORE HON'BLE S/SHRI SANJAY GARG, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.1389 and 1390/Mum/2011
ITA No.2133/Mum/2013
(**निर्धारण वर्ष /** Assessment Years : 2006-07,2007-08 and 2008-09)

Om Estates and Finance Pvt Ltd., 764-E Umrigar Bldg, Tilak Road, Parsi colony, Dadar, Mumbai-400014	**बनाम**/ Vs.	Income Tax Officer, 7(1)(2), Aayakar Bhavan, M K Road, Mumbai.
स्थायी लेखा सं./PAN : AAACO1199H		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से/**Appellant by :**	Shri Devdatta Mainkar
प्रत्यर्थी की ओर से/ **Respondent by :**	Dr.S Pandian

सुनवाई की तारीख / **Date of Hearing : 7.3.2016**
घोषणा की तारीख /**Date of Pronouncement : 11.5.2016**

आदेश / O R D E R

PER RAJESH KUMAR, AM :

These three appeals are filed by the assessee against the two separate orders of ld. CIT(A) dated 23.11.2010 and 16.1.2013 for AYs 2006-07, 2007-08 and 2008-09. Since issue involved in these cases is common and therefore, these appeals are heard together and are being disposed of by this consolidated order for the sake of convenience.

2. Since the grounds of appeal in these three appeals are common except for the figures, therefore, we reproduce the grounds of appeal taken in assessment year 2006-07.

> *"The ld. CIT(A) erred in upholding the order of the ITO thereby dismissing the appeal of the appellant;*
>
> *The ld. CIT(A) on the facts of the case erred in treating rental income as income from house property wherein, in reality and on facts and case it is "Business Income".*

3. The sole issue raised in thee grounds of appeal is against the upholding the order of AO by the ld.CIT(A) in treating the business income from leasing of hotel premises as income from the house property.

4. The facts of the case in brief are that the assessee filed its return of income on 10.1.2007 declaring an income of Rs.1,36,630/-. The case of the assessee was processed under section 143(1) of the Income Tax Act, 1961 (the Act) on 26.11.2007 and thereafter was selected for scrutiny. Statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. The AO during the course of assessment proceedings found that the assessee company had leased out its hotel premises alongwith the movable properties such as kitchen utensils, kitchen equipments furniture, TVs, fixture, lenien + furnishing electric and electronic appliances etc. for an annual lease rent of Rs.9 lakhs and TDS was deducted from the said payment u/s 194 of the Act. After issuing show cause notice dated 11.2.2008 the AO came to the conclusion that the

income from the leased out hotel premises, movable and immovable properties were to be treated as income from the property and not business income as treated by the assessee. The AO also rejected the contention of the assessee that the assessee was running the business operation of hotel since many years and resulted income therefore was treated as business income and the said business was carried on by the assessee company in accordance with the objects clause contained in the Memorandum of Association and also the leasing out of hotel was an commercial decision taken due to glut and depression in the hospitality industry. Thus, the AO assessed the income derived from the hotel as income from house property by allowing deduction u/s 24(a) at the rate of 30% of the total rent. Aggrieved by the decision of the AO, the assessee preferred an appeal before the ld. CIT(A) , who also confirmed the action of the AO by holding that the company had leased out the land and building with moveable properties comprising of old canteen, furniture, fixtures and treating all these items as part of the renting out land and building. The ld. CIT(A) further held that AO had rightly treated the rental income under the head "income from house property" and rightly allowed deduction u/s 24 of the Act on the annual value and no further expenditure was allowable from the said income of house property by placing reliance on various decision as incorporation in para 2.4 of the appellate order. Aggrieved by the decision of the ld. CIT(A), the assessee has preferred an appeal before the Tribunal.

5. The ld. AR submitted before us that the assessee-company was owning and operating hotel till 2000 and thereafter took a commercial decision to lease out the same in view of the overall recession in the hospitality industry by way of two lease agreements simultaneously, leasing out the other movable properties in the hotel such as furniture, fixture, electrical /electronic appliances, canteen equipments etc. copies of which are placed at pages 16 to 30 of the paper book. The ld. Counsel vehemently submitted that the hotel was leased out upon the assessee finding it difficult to operate and run the same on its own due to a market conditions and decision to lease by the same was in accordance with the object clause of the company as enunciated in the Memorandum of Articles of Association of the assessee-company. The ld. Counsel brought to our notice the details of various items leased out which was comprehensively detailed in agreements filed as page 27 to 31 of the paper book. Lastly, the ld.Counsel submitted that the income from the operation of the hotel was treated as income of business which was accepted by the department in the earlier years and likewise the income from the said hotel property and other movable items as detailed in the lease agreements were to be treated as income from the business of the

hotels as claimed by the assessee. In support of the contentions raised by the ld.AR, he placed reliance on the following decisions:

i) Mohiddin Hotels (P) Ltd. reported in 284 ITR 229 (Bom);
ii) Plaza Hotels (P) Ltd-147 ITD 98 (Mum)
iii) Gesco Corporation Ltd-31 SOT 132 (Mum)
iv) Sultan Brothers P Ltd 51 ITR 353 (SC)

6. Per contra, the ld.DR vehemently opposed the argument of the ld. AR by relying on the orders of the authorities below.

7. We have carefully considered the rival contentions and perused the material placed before us. We find that the assessee was owner of the hotel comprised in land admeasuring about 1012 sq. mtr bearing plot No.51 at Hilltop Colony, Lonawala, which was run and managed by the company on its own till the financial year 1999-2000 and thereafter it was leased out at a monthly rent of Rs.75,000/- by giving entire hotel comprising, building, furniture, fixture and movable properties attached thereto and other miscellaneous assets comprising, crockery, fancy items, geezers, air conditioners etc. The AO treated the same as income from the property on the ground that the lease rent accrued from leasing out of the building as hotel and TDS were also deducted from the receipt of rental income u/s 194I of the Act. The ld.CIT(A() also sustained and upheld the findings of the AO on this issue. As it is seen from the record before us and the rival submissions of the counsel that the rent from leasing out of the hotel premises was rightly treated as business income as

the assessee was running the hotel till 2000 and it is only thereafter when the assessee faced difficulties in marketing and operating the hotel it decided to lease out the same which is in accordance with the object clause of the company for which it was formed as per the Memorandum of Association of the company. We find merit in the arguments of the ld AR that the lease rent from the hotel falls under the head of "income from business" and not "from house property" and the assessee was entitled to all the allowances and expenses including the depreciation, from the said lease rent because the hotel is a business asset and has been rented out as a whole. .In case of CIT Vs. Mohiddin Hotels P. Ltd., reported in 284 ITR 229, similar facts were involved. In this case also the hotel was given on lease to a third party. The AO treated the lease income as income from house property against shown by the assessee as business receipt. The Tribunal allowed the issue in favour of the assessee. On appeal before the High Court, the Hon"ble High Court in the aforesaid case confirmed the order of the Tribunal by holding as under :-

> "Held, that from the facts found by the Tribunal as well as the agreement dated February 1, 1987, it was more than clear that the agreement between the assessee and S related to the building that was ready for the purposes of commencing the hotel business. The agreement did not relate to a bare tenement but was in respect of the hotel. That the said hotel was complete with fittings and fixtures and ready for commencing the business was apparent from the agreement.

> The fact that all licences, permissions and no objection certificates required for running hotel were to be obtained in the name of the assessee was a pointer to the aspect that the assessee intended to exploit the business asset (the hotel). The income of Rs. 7,80,000 received from S in the hands of the assessee was income from business under section 28 of the Income-tax Act, 1961."

While holding so, the Hon‟ble High Court has referred to the cases viz., CEPT Vs. Shri Lakshmi Silk Mills Ltd., 20 ITR 451 (SC), CIT Vs. Calcutta National Bank Ltd., 37 ITR 171 (SC), CIT Vs. Vikram Cotton Mills Ltd., 169 ITR 597 (SC), Sultan Brothers P. Ltd. Vs. CIT, reported in 51 ITR 353 (SC) and in case of Universal Plast Ltd. Vs. CIT, 237 ITR 454 (SC). After considering various decisions as mentioned above, the Hon‟ble High Court has held that the assessee has given hotel on lease for exploiting business asset and, therefore, the Tribunal was correct in holding that the income from leasing the hotel was income from business. Facts of the case in hand are similar to the facts before the Hon‟ble High Court in case of Mohiddin Hotels Pvt. Ltd. (supra). Therefore, for this reason also, we are of the view that the receipt from M/s KHIL on account of leasing the hotel was business receipt. There is no dispute that the assessee is owner of the hotel given on lease to M/s KHIL. All the licenses and permissions are in the name of assessee. This is also a fact that the assessee was running its hotel itself before giving to M/s KHIL. Accordingly, in our considered view, the receipts received from KHIL are business receipt. Therefore, we allow this ground of the assessee and direct the AO to treat the business receipt against income from property treated by him.”

In our opinion the facts of the assessee are squarely covered by the aforesaid decision and we, therefore, allow the appeal of the assessee by reversing the order of ld. CIT(A). The AO is directed accordingly.

I.T.A. No.1390/Mum/2011(AY-2007-08)
& ITA No.2133/Mum/2013 (AY-2008-09)

7. We have already decided an identical issue in ITA No. 1389/Mum/2011 (AY-2006-07) and therefore, our decision in ITA No.1389/Mum/2011 would mutatis mutandis would apply to these appeals as well. The AO is directed accordingly.

8. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 11th May,2016.

आदेश की घोषणा खुले न्यायालय में दिनांकः 11th May,2016 को की गई ।

Sd	sd
(संजय गर्ग/SANJAY GARG)	**(राजेश कुमार/RAJESH KUMAR)**
न्यायिक सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

मुंबई Mumbai; दिनांक Dated 11/05/2016

व.नि.स./ SRL , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**