

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D' NEW DELHI**

**BEFORE SH. G.D.AGRAWAL, HON'BLE PRESIDENT  
AND  
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 6070/Del/2014  
(ASSESSMENT YEAR: 2010-11)**

DCIT, Circle-4(1), New Delhi.	<b>vs</b>	Lemon Tree Hotels (P) Ltd., B-6/17, Safdarjang Enclave, New Delhi. PAN-AACCK1698R
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh. Ms. Rano Jain, Adv.
<b>Respondent by</b>	Sh. Vijay Verma, CIT DR
<b>Date of Hearing</b>	19.09.2017
<b>Date of Pronouncement</b>	10.10.2017

**ORDER**

**PER K.N.CHARY, JUDICIAL MEMBER**

This appeal by the Revenue challenging the order dated 29.08.2014 in Appeal No.-0111/2013-14 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-VIII, New Delhi for 2010-11 Assessment Year on the following grounds:-

1. *"Whether on the facts and circumstances of the case & in law, the Ld. (CIT) has erred in restricting the addition u/s 14A r.w. Rule 8D from Rs.3,89,51,174/- to Rs.23,79,288/-.*
  2. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs.91,89,791/- made by A.O. in respect of expenses debited in P&L A/c under the "Employee Stock Option Cost"?*
  3. *Whether on the facts and circumstances of the case & in law, the Ld.CIT(A) has erred in deleting the addition of Rs.11,23,89,000/- made by AO in respect of difference of fair market value and the value adopted by the assessee for relinquishment of right in commercial property?*
  4. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
  5. *That the grounds of appeal re without prejudice to each other."*
2. Briefly stated facts are that the assessee is a private limited company and deriving income from owning, operating and managing hotels, motels, resorts,

restaurant etc. For the AY 2010-11, the assessee filed return of income on 15.10.2010 declaring a total income of Rs.18,94,51,810/- and the AO assessed the income of the assessee by making disallowance u/s 14A of the Income Tax Act, 1961 (in short "Act") of Rs.91,89,731/-, by making disallowance on account of Employee Stock Option Cost (in short "ESOP") and Rs.11,23,89,000/- and on account of relinquish of rights of the assessee, in respect of a commercial space on Plot No.5, District Centre, Jasola, New Delhi. In appeal, by way of the impugned order, Ld. CIT(A) while deleting the additions made on account of ESOP and relinquishing of right of the commercial property, restricted the addition of Rs.3,89,51,174/- u/s 14A of the Act of Rs.23,79,288/-. Aggrieved by this order, the Revenue is in appeal before us. Ground Nos. 4 to 6 are general in nature and do not require any specific adjudication.

3. Adverting to the first ground, it is the argument of the Ld. DR that the AO was right in calculating the disallowance u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962 (in short "Rules") because the assessee was unable to differentiate that investment so made was not from the common pool funds. Per contra, it is the argument of the Ld. AR that during the year under consideration, the assessee earned dividend income of Rs.4,83,547/- and the decision in Delhi High Court in the case of *Joint Investment Pvt. Ltd. vs CIT [2015] 372 ITR 694*, is that by no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income was to be disallowed and the window for disallowance was indicated in Section 14A, and was only to the extent of disallowing expenditure "*incurred by the assessee in relation to the tax exempt income*". He submitted that it is held in this decision that this proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.

4. We have gone through the record. By way of the Paper Book, vide page Nos.27 to 28, the assessee produced balance sheet showing the dividend earned and interest paid and also the computation income of the assessee which clearly establishes that the assessee earned a dividend income of Rs.4,83,547/- and paid a total interest of Rs.17,48,43,433/- for term loan whereas in the computation of income the assessee themselves disallowed a sum of Rs.56,55,890/- towards expenses relating to the exempt income. In *Joint Investment Pvt.Ltd. vs CIT(supra)*, the Hon'ble Jurisdictional High Court held that,

*"...important anomaly which High Court cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs.52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income was to be disallowed. The window for disallowance was indicated in Section 14A, and was only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.*

5. In the given set of circumstances, the assessee themselves allowed Rs.56,55,890/- whereas Ld.CIT(A) restricted the addition of Rs.3,89,51,174/- to Rs.23,79,288/-. It is pertinent to note that the assessee did not express any grievance by challenging the finding of the Ld.CIT(A) in continuing the addition but to a limited extent. In our considered opinion, the finding of the Ld.CIT(A) cannot be challenged by the Revenue keeping in view the settled position of law on this aspect and also in view of the fact that the assessee accepted the same without challenging it by way of appeal or cross-objection. We, therefore, upheld the finding of the Ld.CIT(A) and dismiss this ground of appeal.

5. Now, turning to Ground No.2, the AO made an addition of Rs.91,89,791/- in respect of ESOP alleging the outgoing expenses are only notional and the

expenditure is allowable only when the shares are purchased by the employer. However, in view of the fact that this issue was covered in assessee's own case in respect of the AYs 2008-09 & 2009-10 in *ITA No.4588/Del/2013 in Lemon Tree Hotels Ltd. vs Addl. CIT* vide order dated 23.06.2014 and *ITA No.209/Del/2014 in DCIT vs M/s Lemon Tree Hotels Pvt. Ltd.* vide order dated 18.01.2016 in assessee's favour, Ld.CIT(A) took note of the same and followed the decision of the Tribunal for those two years. It is brought to our notice by the Ld.AR that these two decisions of the Co-ordinate Bench of this Tribunal are upheld by the Hon'ble Jurisdictional High Court in *ITA No.107/Del/2015* decided on 18.08.2015 and *ITA No.862/Del/2016* decided on 02.12.2016. In view of these binding decisions of the Hon'ble High Court, we cannot interfere with the findings of the Ld. CIT(A) on this aspect, as such upholding the same, we dismiss this ground of appeal.

6. Now, coming to the third ground, during the relevant previous year, the assessee relinquishes his rights in respect of a commercial space at Plot No.5, District Centre, Jasola, New Delhi for a total consideration of Rs.56,20,00,000/- which was acquired by the assessee on 02.05.2005 for Rs.20,15,55,501/- as such the difference of Rs.36,04,44,499/- was shown by the assessee in his P&L A/c. Ld.AO referred the matter to the Department Valuation Officer (in short "DVO") and accepted the valuation of DVO at Rs.67,09,04,000/- and added the difference of Rs.11,23,89,000/- to the income of the assessee. Ld.CIT(A) in his order observed that section 50C(1) of the Act prescribes that where the considerations received by the assessee on sale of land and building is less than the value adopted or assessable by any Stamp Valuation Authority, then the value so adopted or assessable by Stamp Valuation Authority shall be deemed to the full value of the

consideration received as a result of transfer of capital assets, and on consideration of the record including relinquishment deed, sale deed considered by the DVO for comparison of the value of circle rates, Ld.CIT(A) found the value at which the rights were relinquished is more than the valuation as per the circle rates prescribed by the Stamp Valuation Authority inasmuch as value as per the relinquish mandate deed was Rs.55,85,15,000/-, the value assessable as per Stamp Valuation Authority was only Rs.30,06,59,236/-. It is the arguments of the Ld.AR that the provisions of section 50C(1) are applicable only in case where the value adopted by the assessee is less than the value as per the Stamp Valuation Authority and if the value ascertained by the DVO is more than the value ascertained by the Stamp Valuation Authority only. Reliance is placed by the Ld. AR on the decisions of the Hon'ble Punjab & Haryana High Court in *B.M.J Real Estate (P.) Ltd. vs CIT in ITA No.114/2015* dated 15.09.2015 and the decision of Coordinate Bench of ITAT, Lucknow Tribunal in the case of *Jitendra Mohan Saxena vs ITO [2008] 305 ITR 62*.

7. On a careful consideration of this matter and in the light of the provisions of section 50C(1) to (3) of the Act and the decisions relied upon by the assessee, we are of the considered opinion that the findings reached by the Ld.CIT(A) do not suffer any irregularity and the reasons given by the Ld.CIT(A) to reach such findings are impeccable. With this view of the matter, we are not inclined to interfere with the findings of the Ld. CIT(A) and consequently dismiss this ground of the appeal.

8. In the result, the appeal filed by the Revenue is dismissed.

**The order is pronounced in the open court on 10<sup>th</sup> October, 2017.**

**Sd/-  
(G.D.AGRAWAL)  
PRESIDENT**

**Sd/-  
(K.N.CHARY)  
JUDICIAL MEMBER**

*\*Amit Kumar\**  
*Date:- 10.10.2017*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI