

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos1620&1621/Bang/2017
Assessment Year: 2011-12 & 2012 – 13

M/s. New Bridge Centre Private Limited No.777/D, HAL 2nd Stage, 100 feet Road Indiranagar Bengaluru-560 038 PAN NO : AABCN6244K	Vs.	Deputy Commissioner of Income Tax Circle-5(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajnish Ramarao, A.R.
Respondent by	:	Shri Manjeet Singh, D.R.

Date of Hearing	:	22.06.2020
Date of Pronouncement	:	26.06.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed these two appeals challenging the common order dated 09-12-2017 passed by Ld CIT(A)-5, Bengaluru and they relate to the assessment years 2011-12 and 2012-13. Both the appeals were heard together and hence they are being disposed of by this common order.

2. In both the years, the assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowances made by the AO out of expenses claimed by the assessee.

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3. Both the appeals are barred by limitation. The assessee has filed petition dated 13.7.2017 seeking condonation of delay. Having regard to submissions made therein, we condone the delay and admit the appeals.

4. The facts relating to the case are discussed in brief. During the years under consideration, the assessee has admitted income from sub-letting of properties taken on rent. The assessee declared its income under the head Income from Business on the plea that it is exploiting the commercial property by furnishing the premises taken on rent with certain amenities. The AO did not accept the submissions of the assessee. Accordingly, the AO assessed the income under the head Income from other sources in both the years under consideration. While determining the net income, the AO restricted the amount of certain expenses without making any discussion on the body of the assessment order and also made certain additions after discussing about them. The Ld CIT(A) confirmed the assessment orders passed for both the years under consideration. Aggrieved, the assessee has filed these appeals before us.

5. We shall first take up the appeal filed for assessment year 2011-12. The assessing officer computed net income of this year as under:-

Gross receipts as per P & L a/c	7,75,58,849
Less:- Allowable Expenditure	
1. Rent Paid	1,51,62,183
2. Admin Expenses allowed	4,77,83,850
3. Financial expenses	14,93,854
4. Total income from other sources *	6,96,825
	----- 6,51,36,712
Net Income	----- 1,24,22,137 =====

(* "Depreciation amount" – wrongly stated by AO as above)

From the financial statements, it can be noticed that the administrative expenses claimed by the assessee in the Profit and Loss account was Rs.5,77,83,850/-. However, the AO has restricted the administrative expenses to Rs.4,77,83,850/- without discussing anything in the assessment order, i.e., he did not give any reasoning as to why he has restricted the claim of administrative expenses.

6. The assessee challenged the above said action of the AO by filing appeal before Ld CIT(A). We have noticed earlier that the Ld CIT(A) had passed a common order for AY 2011-12 and 2012-13. The first appellate authority has initially observed that the disallowance of Rs.1.00 crore was made for non-furnishing of details relating to Administrative expenses. However, later he has observed that the AO did not make any disallowance of Rs.1.00 crore. It appears that the Ld CIT(A) has referred to the financial statements and assessment order relating to AY 2012-13 instead of the documents pertaining to AY 2011-12 and accordingly he has observed that the AO has not

disallowed the amount of Rs.1.00 crore, as submitted by the appellant.

7. The Ld A.R submitted that the assessee has given break-up details of administrative expenses of Rs.5,77,83,850/- in Schedule H of Annual report. He submitted that the assessing officer did not discuss anything about the expenses claimed by the assessee and also did not give any reasons as to why he has taken the claim of administrative expenses at Rs.4,77,83,850/- as against the actual figure of Rs.5,77,83,850/-. He submitted that the assessee was also not given any opportunity by the AO in respect of this implied disallowance. He submitted that it could be a case of an inadvertent error also. Accordingly, he submitted that there was no justifiable reason to reduce the amount of administrative expenses by Rs.1.00 crore. He further submitted that the Ld CIT(A) has misdirected himself by referring to the assessment order of AY 2012-13 and accordingly observed that the AO did not make disallowance of Rs.1.00 crore. Accordingly, he prayed for deletion of this disallowance.

8. On the contrary, the Ld D.R submitted that the break-up details are available in the Annual report and hence the matter may be restored to the file of AO for examining it afresh.

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9. We heard the parties and perused the record. We notice that the assessing officer did not discuss anything about the above said disallowance of Rs.1.00 crore, i.e., by way of restricting the amount of administrative expenses to Rs.4.77 crores as against the claim of Rs.5.77 crores. The assessee has furnished Annual Report and Schedule H of the Annual report contains the break-up details of the administrative expenses. Hence it is not a case of non-furnishing of details of by the assessee as observed by Ld CIT(A), since the Annual report was very much available before the assessing officer. The Ld A.R also submitted that the assessing office did not given any opportunity to the assessee in this regard.

10. The proceedings before the assessing officer is quasi-judicial proceedings and hence, while acting in their quasi-judicial capacity, the income tax authorities have to adhere to the principles of natural justice. In Suraj Mall Mohta and Co. v. A. V. Visvanatha Sastri [1954] 26 ITR 1 (SC), the Supreme Court has held that the assessment proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before any conclusion is arrived at.

11. The principle of natural justice has been explained by Hon'ble Supreme Court in various other cases also. Failure to afford opportunity to the assessee to cross-examine a third party whose

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evidence is sought to be utilised would make the assessment void as held in the cases of *Kishinchand Chellaram v. CIT* [1980] 4 Taxman 29 (SC), *Sona Electric Co. v. CIT* [1984] 19 Taxman 160 (Delhi), *Nathu Ram Prem Chand v. CIT* [1963] 49 ITR 561 (All). In the case of *Andaman Timber Industries v. CCE* [2015] 62 taxmann.com 3/52 GST 355 (SC), the Apex Court observed that not allowing the assessee to cross-examine the witness whose statement has been relied upon to frame the order is a serious flaw. This makes the order a nullity.

12. Hence it is the bounden duty of the assessing officer to adhere to the Principle of Natural Justice, as explained by Hon'ble Supreme Court in the above said cases. Hence the assessee should be given proper opportunity by the assessing officer to explain its case before the AO takes any action adverse to the assessee. In the instant case, we notice that the assessing officer neither called for explanations from the assessee nor did he explain as to why he is restricting the claim of administrative expenses to Rs.4.77 crores as against the claim of Rs.5.77 crores. Accordingly, we are of the view that there is no reason to reduce the claim of administrative expenses by Rs.1.00 crore. Accordingly, we direct the AO to allow the administrative expenses fully as claimed by the assessee at Rs.5.77 crores.

13. We shall now take up the appeal filed for AY 2012-13. We heard the parties and perused the record. In this year also, as in the earlier year, the AO computed the income of the assessee under the head Income from other sources as under:-

Gross receipts as per P & L a/c	16,56,62,733
Less:- Allowable Expenditure	
1. Rent Paid	5,70,44,339
2. Admin Expenses allowed	6,98,20,334
3. Financial expenses	59,79,990
4. Depreciation as per IT Act	26,94,024
5. Employee Benefits	1,80,02,255

	15,35,40,942

Net Income	1,21,21,791
	=====

14. The first issue relates to the action of the AO in not allowing claim of Rs.31,76,042/- relating to pantry and stationery purchase. It can be noticed that the rent paid figure adopted by the AO is Rs.5,70,44,339/-. However, the Profit and Loss account shows a figure of Rs.6,02,20,381/- under the head 'cost of material consumed', which comprises of rent expenses of Rs.5,70,44,339/- and Pantry & Stationery purchase of Rs.31,76,042/-. The AO, however, without discussing anything in the assessment order, did not allow deduction of Rs.31,76,042/-, referred above.

15. In the immediately preceding year also, the AO had reduced the claim of administrative expenses by Rs.1.00 crore without discussing anything in support of his action. We have held that the AO was not

justified in doing so under the Principles of natural justice and accordingly directed him to allow the administrative expenses as claimed by the assessee. The reasoning given by us on the above said issue in the preceding year would equally apply in this year on this issue also. Accordingly, for the same reasons discussed in the preceding paragraphs on the principle of natural justice, the action of the assessing officer cannot be upheld. Accordingly, we direct the AO to allow deduction of Rs.31,76,042/- relating to pantry and stationery purchase.

16. The next issue relates to the disallowance made out of Building maintenance expenses. The AO noticed that the assessee has claimed a sum of Rs.45,57,237/- under the head Building maintenance Services. The above said expense was grouped under the head "Administrative expenses". According to AO, the assessee did not produce proper break-up of the asset owned by it and expenses related to building. Hence the AO disallowed 40% of the above said claim. The Ld CIT(A) also confirmed the same.

17. We heard the parties on this issue and perused the record. We have earlier noticed that the assessee has taken certain building on rent and sub-let it by making certain amenities. Hence the assessee has claimed rent payment expenses as deduction and the AO has also allowed the same. Further the Fixed Assets Schedule

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given in the financial statements furnished by the assessee would show that the assessee does not own any building. Hence, the AO was not correct in observing that the assessee did not produce break-up details of asset (buildings) owned by it, since the assessee does not own any building. The AO has also observed that the assessee did not produce break-up details of expenses related to the building. It is not clear whether the AO did call for any detail or not. We have noticed that the assessee is carrying on sub-letting activity on the buildings taken on rent. Hence the expenses incurred on building should be mainly on maintenance activities only. We notice that the AO has disallowed 40% of expenses on adhoc basis, i.e., he did not bring any material on record to support the estimate of 40%. Accordingly, in the absence of any supporting evidences, we are of the view that the disallowance of 40% of expenses on the higher side. Since the assessee has not furnished any break-up details, we are of the view that some disallowance out of the above said expenses is called for. In our view the disallowance may be restricted to 10% of the expense claimed under the head building maintenance services, i.e., 10% of Rs.45,57,237/- and the same would take care of deficiencies, if any in the claim. We order accordingly. The order passed by Ld CIT(A) on this issue stands modified accordingly.

18. The next issue relates to the disallowance of Rs.7.00 lakhs out of miscellaneous expenses. The claim of miscellaneous expenses

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was also grouped under the head Administrative expenses. We notice that the assessee has claimed a sum of Rs.6.98 crores as Administrative expenses. The AO has disallowed a sum of Rs.7.00 lakhs by observing that the assessee has not furnished the details of miscellaneous expenses. We notice that the AO has made this disallowance without properly analysing the financial statements furnished by the assessee. We notice from the financial statements furnished by the assessee that the details of administrative expenses are given in Schedule 24. Further the miscellaneous expenses included in the break-up details of administrative expenses was Rs.4,09,950/- only. Hence we are unable to understand as to how that the AO could disallow a sum of Rs.7.00 lakhs out of miscellaneous expenses. Accordingly, we are of the view that there is no basis for making disallowance of Rs.7.00 lakhs. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this disallowance.

19. In the result, the appeal filed by the assessee for AY 2011-12 is allowed and the appeal filed for AY 2012-13 is partly allowed.

Order pronounced in the open court on 26.06.2020

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 26th June, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.