

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 169 to 172/Bang/2021
Assessment years : 2010-11 to 2013-14

Akarsh Residence Pvt. Ltd., No.10, Vittal Mallya Road, Bengaluru – 560 001. <b>PAN: AAICA 0191P</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 2(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT) & Shri Priydarshi Mishra, Add.CIT(DR)(ITAT), Bengaluru

Date of hearing	:	07.09.2021
Date of Pronouncement	:	07.09.2021

**ORDER**

*Per Chandra Poojari, Accountant Member*

These appeals are by the assessee directed against the separate orders of the CIT(Appeals)-11, Bengaluru, all dated 26.2.2021 for the assessment years 2010-11 to 2013-14.

2. The assessee has raised common grounds in all these appeals, except change in figures, which were heard together and disposed of by this common order for the sake of brevity. The grounds raised for AY 2010-11 are as follows:-

“1. The learned Commissioner of Income-tax (Appeals) has erred in dismissing the appeal and confirming the order passed by Assessing Officer. The order passed by learned assessing officer being bad in law and void-ab-inito was required to be quashed instead of being confirmed.

2. In any case, the learned Commissioner of Income-tax (Appeals) has erred in holding that the appellant has not complied with the notices issued and not interested in pursuing the appeal. The appellant had complied with the hearing notice issued by filing the detailed written submissions. The order passed without considering the detailed written submissions in gross violation of principles of natural justice and same is liable to be quashed.

3. In any case, the learned CIT(A) should have quashed the order, as the order passed by Assessing Officer was without properly assuming the jurisdiction and without properly complying with the law.

4. In any case, the learned Commissioner of Income-tax (Appeals) failed to appreciate that the assessing officer had not properly assumed the proper jurisdiction u/s. 153C of I.T. Act, 1961. In the absence of the assumption of proper jurisdiction proper satisfaction note, the assessment order passed by Assessing Officer being bad in law and void-ab-inito required to be quashed.

5.1 In any case, the learned Commissioner of Income-tax (Appeals) has erred in confirming the disallowance made u/s 36(1)(iii) of the Act amounting to Rs. 2,31,44,384/-holding that the appellant had not submitted any explanation during appellate proceedings. The appellant had filed a detailed written submissions and the CIT(A) has erred in not . considering the same. The disallowance as made /confirmed is erroneous both on facts and law is to be deleted.

5.2 In any case, the authorities below have erred in not appreciating the fact that the amounts were invested in related concern are out of commercial expediency hence no disallowance u/s 36(1)(iii) of the Act is warranted.

5.3 In any case and without further prejudice, the disallowance as made is erroneous and excessive.

6.1 The learned assessing officer has erred in holding that the total disallowance u/s. 14A r.w. rule 8D of the Act is Rs. 2,48,41,884/- and ultimately disallowing a sum of Rs.16,97,500/- holding that the balance sum is already disallowed u/s 36(1)(iii) of the Act. And the learned CIT(A) has erred in holding that the confirming the same holding that the appellant has not furnished any explanation in support of the addition made. On the facts and circumstances of the case and the detailed written submissions filed, the provisions of section 14A are not applicable at all. The action of authorities below is totally erroneous and is to be negated.

6.2 In any case and without prejudice, the learned CIT(A) has erred in holding the disallowance made u/s 14A is 2,48,41,884/- as against the actual disallowance of Rs. 16,97,500/-. The conclusion of CIT(A) being wholly erroneous both on facts and law is to be rejected.

6.3 The learned authorities below have erred in not appreciating the fact that for the year under consideration, the appellant has not earned any exempt income. In the absence of exempt income, the disallowance as made by the assessing officer is not warranted. The disallowance as calculated and as made is totally erroneous is to be deleted in entirety.

6.4 In any case, the disallowance as made is erroneous and excessive.

7. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the impugned order be quashed or atleast the disallowance/additions as made be deleted and the appellant be allowed to carry forward the losses as claimed in the return of income.”

3. We first take up ground No.2 for adjudication stating that the impugned order is passed without considering the detailed written submissions in gross violation of principles of natural justice.

4. We have heard both the parties and perused the material on record. The CIT(Appeals) has passed *ex parte* order on the basis of material available on record before him stating that the assessee has neither responded to statutory notices nor present for the hearing. The contention of the Id. AR is that the assessee had filed written submissions in the paperbook before the CIT(Appeals) on 26.4.2019 which has not been considered while passing the *ex parte* order. A copy of the same is filed before us. We find that the written submissions of the assessee dated 19.4.2019 has been filed in the office of the CIT(Appeals) on 26.4.2019. However, these submissions were not considered by the CIT(Appeals) while passing the impugned order. In our opinion, it is appropriate to remit the issue to the CIT(Appeals) to give one more opportunity of hearing to the assessee. Accordingly, we set aside the order of CIT(Appeals) and restore the appeal to his file for fresh decision in accordance with law after considering the written submissions filed by the assessee and after providing opportunity of being heard to the assessee. The assessee is directed to cooperate in the proceedings before the CIT(Appeals). Ordered accordingly. At this stage, we refrain from adjudicating the other grounds of appeal raised by the assessee on merits.

5. In the result, all the appeals by the assessee are allowed for statistical purposes.

Pronounced in the open court on this 7<sup>th</sup> day of September, 2021.

Sd/-  
( BEENA PILLAI )  
JUDICIAL MEMBER

Sd/-  
( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 7<sup>th</sup> September, 2021.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.