

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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 571/Kol/2021

Assessment Year: 2014-15

BCT Infrastructure LLP.....Appellant
[PAN: AAJFB 9971 A]

Vs.

ITO, Ward-28(1), Kolkata.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : May 19th, 2022

Date of pronouncing the order : June 15th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi [in short ld. "CIT(A)"] dated 17.08.2021 arising out of the assessment order framed u/s 143(3) of the Act dated 16.12.2016.

2. Registry has informed that the appeal is time barred by 59 days. Condonation application has been filed by the assessee. Perusal of the same shows that the delay was on account of

COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period in filing appeal under this period. Since the period of limitation in the course of the assessee falls during this period, the same deserves to be extended and we, therefore, condone the delay of 59 days and admit the appeal for adjudication.

3. The assessee is in appeal before the Tribunal raising the following grounds:

"1. For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

2. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of motor car expenses of Rs.3,33,773 on account of personal use of car by the partner. The entire disallowance on personal use is not justified and may be suitably reduced. Further out of Rs.3,33,773 the interest of car loan of Rs.61,430 was not claimed as an expenditure and was transferred to Work in progress account. The addition to the income made by the assessing officer was factually incorrect and hence the same be deleted.

3. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.74,398 being 10% of Rs.7,43,981 on account of Telephone Expenses, Conveyance Charges and general expenses. The disallowance is uncalled for hence the same be deleted. The correct amount of expenditure was Rs.3,94,966 and not Rs.7,43,981. Further a sum of Rs.2,84,147 expense was not claimed as an expenditure and was transferred to Work in progress account. The addition to the income made by the assessing officer and upheld by the Commissioner of Income Tax Appeal was factually incorrect and hence the same be deleted.

4. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.99,593/- on account of interest on Service Tax, TDS, Penalty for P. Tax, Loss from LLP Donation and sundries balance written off being not related to the business of the assessee. The expense was not claimed as an expenditure and disallowed in computation to the extent of Rs.67,021 and Rs.20,960 part of the same was transferred to Work in progress account. The amount of Rs.99,593 was incorrect. The addition to the income made by the assessing officer and upheld by the Commissioner of Income Tax Appeal was factually incorrect and hence the same be deleted.

5. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding the disallowance of Rs.23,935 being 10% of Rs.2,39,354 on account of business promotion expenses were not substantiate by evidences and claimed to be in the use of personal nature. The disallowance is uncalled for hence the same be deleted. The expense was not claimed as an expenditure and was transferred to Work in progress account. The correct amount was Rs.1,62,372 and not Rs.2,39,354 as stated in the assessment order. The addition to the income made by the assessing officer and partly upheld by the Commissioner of Income Tax Appeal was factually incorrect and hence the same be deleted.

6. For that the assessing officer be directed to start the computation of income by considering the returned loss of Rs. 1,32,760 which was not done in the assessment order.

7. For that the interest computed u/s 234 A/B/C of the IT Act 1961 is over charged and wrongly calculated and or is not applicable to the assessee case hence the interest be deleted and or correctly computed.

8. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.

9. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”

4. Brief facts of the case are that the assessee is a Limited Liability Partnership (in short the “LLP”) engaged in partnership business. E-return for Assessment Year 2014-15 filed on

22.09.2014 declaring NIL income. Case was selected for scrutiny through CASS followed by serving of notice.

5. On going through the details filed by the assessee including the audited accounts, bank statement, balance sheet, computation of income. Ld. Assessing Officer (in short ld. "AO") made certain disallowances towards motor car expenses, telephone expenses, interest on service tax and business promotion expenses totalling to Rs. 7,47,118/-. Income assessed at Rs. 7,47,120/-.

6. Aggrieved, the assessee preferred appeal before ld. CIT(A) and partly succeeded. Further, aggrieved, the assessee is now in appeal before this Tribunal.

7. Ld. Counsel for the assessee submitted that ld. CIT(A) failed to appreciate the fact that most of the expenses disallowed by ld. AO were not claimed as an expenditure but were transferred to construction work-in-progress account and became part of cost of project. Further, it was submitted that the disallowances made by ld. AO are ad-hoc in nature without observing any discrepancy in the books of account.

8. Per contra ld. D/R vehemently argued in support of the orders of lower authorities.

9. We have heard rival contentions and perused the records placed before us.

10. The assessee raised various grounds of appeal challenging the finding of the ld. CIT(A) confirming the disallowances of

expenses made by the ld. AO. We note that the assessee is a Limited Liability Partnership (in short the “LLP”) and is engaged in the construction business. A perusal of profit & loss account shows that during the year construction expenses including other institutional expenses incurred for construction of flat amounting to Rs. 6,97,94,004/- has been carried forward as a closing work-in-progress. Administrative expenses at Rs. 4,21,251/- and depreciation at Rs. 3,74,176/- has only been claimed in the profit & loss account and the same has been claimed against the other income of Rs. 5,95,647/-. Out of all the disallowances made by the ld. AO some of them confirmed by ld. CIT(A) are those expenses which have not been claimed as an expenditure during the year. Also ld. AO in the assessment order has observed that the assessee has furnished required details but without pointing any specific error or discrepancy in the expenses so claimed by the assessee, had made these disallowances which are *prima facie* ad-hoc in nature.

11. Ground no. 1 being general in nature and no specific arguments made by the assessee is dismissed.

Ground no. 2

12. This ground relates to disallowance of motor car expenses at Rs. 3,33,773/-. We find that the assessee has only claimed motor car expenses at Rs.72,250/- during the year in the profit & loss account and depreciation of Rs. 2,00,093/- on the motor car. Revenue has failed to bring any evidence to show that this motor car was not used for business purposes. Giving a general remark

that it was used by the partner will not be sufficient to hold the disallowance. However, considering the facts and circumstances of the case and being fair to both the parties, we confirm disallowance of motor car expenses only to the extent of Rs. 15,000/- and delete the remaining disallowance confirmed by the Id. CIT(A). Hence, this ground is partly allowed.

Ground no. 3

13. This ground relates to disallowance of Rs. 74,398/- made by the Id. AO at the rate of 10% on the telephone expenses, conveyance charges and general expenses is in dispute before us. Firstly, the actual expenditure incurred during the year on these three heads is at Rs. 3,94,966/- and out of this sum Rs. 2,84,147/- was not claimed in the profit & loss account. The balance amount claimed as an expenditure during the year is only Rs. 1,10,819/- and, therefore, 10% of it i.e. 11,082/- is confirmed and the remaining disallowance is deleted. Hence, ground no. 3 is partly allowed.

Ground no. 4

14. This ground relates to disallowance of Rs. 99,593/- on account of interest on service tax, TDS, penalty for P. tax is in dispute before us. On examining the facts of the case, we find that the actual amount in these heads is only 87,981/-. Out of Rs. 87,981/- amount of Rs. 67,021/- already stands disallowed in the computation of income *suo-moto* by the assessee and the remaining amount of Rs. 20,960/- has not been claimed as an expenditure during the year as it has been transferred to

construction work-in-progress. Therefore, under the given facts and circumstances the disallowance of Rs. 99,593/- was uncalled for and the said disallowance is deleted. Hence, ground no. 4 is allowed.

Ground no. 5

15. This ground relates to the disallowance of Rs. 23,935/- being 10% of business promotion expenses of Rs. 2,39,354/- confirmed by Id. CIT(A). On going through the records, we find that firstly, the alleged business promotion expense has not been claimed by the assessee in the profit & loss account but has been shown in the construction work-in-progress account and secondly, the correct amount of the expenses is Rs. 1,63,272/-. Since, the business promotion expenditure has not been claimed in the profit & loss account, there remains no scope to make any disallowance of the expenditure. Accordingly, we reverse the finding of the Id. CIT(A) and delete the ad-hoc disallowance of Rs. 23,935/- made on account of business promotion expenses.

Ground no. 6

16. Through this ground the assessee has stated that in the computation of income as well as ITR filed for the year under appeal, loss of Rs. 1,32,760/- has been shown. Return of income is filed before due date of filing return of income u/s 139(1) of the Act. However, Id. AO has shown NIL income in the assessment order while computing total income of the assessee. We find merit in the contention of the Id. Counsel for the assessee and on observing that loss of Rs. 1,32,761/- has been declared in the

return of income filed on 22.09.2014, the same ought to have been captured in the assessment order. We, thus, direct the Revenue authority to make necessary rectification and income from business as per return should be taken as loss of Rs. 1,32,761/-. Thus, ground no. 6 of the assessee is allowed.

17. Ground nos. 7, 8, 9 & 10 are general in nature which need no adjudication.

18. In the result, the appeal of the assessee is partly allowed.

Kolkata, the 15th June, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 15.06.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. BCT Infrastructure LLP, Ground Floor, 21/A, Charu Chandra Avenue, Kolkata-700 033.***
- 2. ITO, Ward-28(1), Kolkata.***
- 3. CIT(A)- National Faceless Appeal Centre (NFAC), Delhi.*
- 4. CIT-*
- 5. CIT(DR), Kolkata Benches, Kolkata.*

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata