

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.172/Hyd/2022		
Assessment Year: 2018-19		
Nalgonda Realtors P Ltd Secunderabad PAN:AACCN6261H (Appellant)	Vs.	A.C.I.T. Central Circle 2(3) Hyderabad (Respondent)
Assessee by:	Shri Kiran Manohar	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	22/09/2022	
Date of pronouncement:	26/09/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 16.02.2022 of the learned CIT (A)-12, Hyderabad relating to A.Y.2018-19.

2. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of real estate. It filed its return of income on 28.9.2018 declaring total loss of Rs.4,70,469/-. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued and served on the assessee. During the course of assessment proceedings, the Assessing Officer noted from the financials of the assessee company that certain portion of sale advances were diverted to

make investments in group companies. He therefore, asked the assessee to explain as to why finance cost on such diverted funds should not be disallowed on pro-rata basis since the diverted funds were utilized for non-business purpose. Rejecting various explanations given by the assessee and relying on various decisions, the Assessing Officer made addition of Rs.80,02,111/- by observing as under:

“3.4. The above contentions of the assessee are perused and found to be not acceptable for the following reasons:

1. The claim of the assessee that the entire finance cost debited to profit and loss account is allowable u/s 36(1)(ii) of the Act is not tenable for the reason that interest bearing funds were diverted for making investments in companies from which no income is earned.

2. The assessee was not able to adduce any evidence with regard to commercial exigency in making investments in other companies. The companies in which investments were made are neither associate companies nor holding/subsidiary companies of the assessee company.

3. The case laws relied upon by the assessee are distinguishable on facts and hence the ratio is not applicable to the facts and circumstances of the case of the assessee company.

4. The assessee is not an investment company whose main business activity is making investments in other companies.

5. The interest-bearing funds were diverted to make investments in other companies and proportionate interest attributable to such diverted funds cannot be allowed u/s 36(1)(i) since the same was incurred for non-business purposes.

6. On similar facts In the case of the assessee for A.Y 2012-13, the CIT(A) for the A.Y 2012-13 in his order in Appeal No. given 10241/2019-20 dtd 18/09/2020 has a categorical finding that certain portion of sale advances were diverted to non business purposes and hence upheld the disallowance of finance cost to the extent attributable to such diverted funds.

3.1.5 On verification of the financials of the company for the year ending 31.03.2018, it was found that the Rs.2,05,30,838/- and interest free funds available with the assessee amounted to non current investments made amounted to Therefore, interest bearing Rs.8,72,15,100/- funds diverted for non business Rs.6,66,84,262/-. The purposes amounted to interest paid on sale advances average ranged from 10% to 14% and hence interest rate of 12% was applied by Hon'ble CIT(A) to arrive at disallowance. The pro-rata finance cost

interest attributable to the above diverted Rs.6,66,84,262/- interest bearing funds of is worked out at Rs.80,02,111/-. In view of the foregoing, out of finance cost of Rs. diverted 7,87,05,573/- claimed for A.Y 2018-2019, finance cost of Rs.80,02,111/- attributable to funds is disallowed and added to the income returned by the assessee.”

3. In appeal, the learned CIT (A) confirmed the disallowance made by the Assessing Officer by observing as under:

“5.3 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. It is seen that the Ld.CIT(A)-12 in the appellant's own case in F.No.10241/2019-20, dated 18-09-2020 in AY 2012-13 passed a detailed order holding that certain portion of the sale advances were diverted for making investments in companies from which no income is earned. Therefore, after Ld.CIT(A) disallowed the finance cost on such diverted funds on pro-rata basis. This order was followed by the AO wherein he had disallowed average interest @12% on pro-rata basis on the funds so diverted. Respectfully, the following decision of Ld.CIT(A) on the assessee's own case for AY 2012-13, the disallowance of interest of Rs.80,02,111/- is confirmed. All the grounds related to this issue are DISMISSED.”

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1) The order of the CIT (Appeals) is erroneous both on facts and in law.

2) The Ld CIT(Appeals) erred in holding that the financial charges incurred by the appellant are not totally eligible for deduction and that there was any diversion of the borrowed funds for purposes other than business activity.

3) The Ld CIT (Appeals) erred in confirming the disallowance of interest of Rs. 80,02,011/- made by the assessing officer without considering the fact that they are financial charges relatable to business activity carried on by the appellant and the expenses are inextricably linked to the business activity.

4) The Ld CIT (Appeals) erred in not considering the fact that no part of the borrowed funds have been diverted for any other purposes other than the business activity.

5) The Ld CIT(A) erred in not considering the fact that the advances remaining in the books of a/c do not bear interest for, as per agreement interest is payable only when the advances are refundable.

6) Any other ground or grounds that may be urged at the time of hearing
“.

5. The learned Counsel for the assessee at the outset filed a copy of the order of the Tribunal in assessee's own case for the A.Y 2012-13, 2013-14 & 2017-18 in ITA Nos.655 to 657/Hyd/2020 and submitted that the Tribunal restored the issue to the file of the Assessing Officer by observing as under:

“It next emerges that the assessee's second substantive grievance pleaded herein seeks to delete section 36(1)(1) interest disallowance pertaining to the alleged finance costs. Both the learned representatives duly agree that we have already decided identical issue in preceding paragraphs back to the Assessing Officer for his afresh factual verification and computation in light of assessee's stand having denied any interest in the business of plot development as well as all other aspects. We adopt the very detailed discussion herein as well to restore the instant issue back to the Assessing Officer. Ordered accordingly. This appeal ITA 655/Hyd/2020 for A.Y. 2012-13 is partly allowed for statistical purposes.”

5.1 After hearing both sides and respectfully following the decision of the Coordinate Bench of the Tribunal in assessee's own case for the A.Y 2012-13, we deem it proper to restore the issue to the file of the Assessing Officer to decide the issue afresh in the light of the direction of the Tribunal. Grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 26th September, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 26th September, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. Nalgonda Realtors Pvt Ltd D.No.1-56/26 & 27 Plot No.25 to 28 IG Statue, Near Bharat Petrol Bunk, Old Alwal, Secunderabad 500010
2	ACIT, Central Circle 2(3) Hyderabad
3	CIT (A)-12, Hyderabad
4	Pr. CIT-Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order