

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.131/Bang/2022
Assessment Year : 2016-17

M/s. Nandi Economic Corridor Enterprises Ltd., No.1, Midford House, Midford Garden, Bengaluru – 560 001. PAN : AABCN 2061 N	Vs.	The Assistant Commissioner of Income Tax, Circle – 5(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Siva Prasad Reddy, ITP
Revenue by	:	Capt. Pradeep Arya, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	06.10.2022
Date of Pronouncement	:	07.10.2022

ORDER

Per George George K, Judicial Member :

This appeal at the instance of assessee is directed against the order of the CIT(A) dated 27.12.2021. The relevant Assessment Year is 2016-17. The assessee has raised 6 grounds in its memorandum of appeal. Grounds 1 and 6 are general in nature and no specific adjudication is called for. Hence, the same are dismissed. The learned AR did not press for adjudication ground No.5 during the course of hearing, hence, the same is dismissed. The surviving grounds viz., grounds 2 to 4 reads as follows:

Disallowance of depreciation.

3. *The learned AO as well as the CIT(A) erred in not appreciating that the appellant is entitled to the amortisation of cost over the concessionaire period as per the Circular No.9/2014 of the CBDT.*

Advertisement & Business Promotion Expenses.

4. *The learned AO as well as the CIT(A) erred:*

(i) In not appreciating that disallowance of 50% of advertisement expenses amounting to Rs.1,13,621/- is not justified when the genuineness of the expenditure is not disputed.

(ii) In not appreciating that 50% of the business promotion expenses amounting to Rs.10,54,817/- could not be disallowed without giving the appellant an opportunity of being heard on this issue.

2. The brief facts of the case are as follows:

The assessee is a company engaged in the business of development, maintenance and operation of integrated infrastructure corridor in Karnataka. For the Assessment Year 2016-17, return of income was filed on 17.10.2016 declaring loss of Rs.54,90,07,135/-. Revised return was filed on 18.02.2017 in order to claim TDS credit of Rs.81,72,198/- as against the TDS credit of Rs.61,92,198/- claimed in the original return of income. The assessment was selected for scrutiny by issue of notice under section 143(2) of the Income Tax Act, 1961 (hereinafter called 'the Act') on 19.07.2017. The assessment under section 143(3) was completed vide order dated 28.12.2018 by reducing the loss to Rs.30,83,50,703/- consequent to making addition / disallowance of Rs.24,06,56,432/-. The addition / disallowance made by the AO are as follows:

- i. Interest on advance - Rs. 3,63,426/-
- ii. Depreciation on the land beneath the toll road - Rs.4,10,31,645/-

- iii. Advertisement and business promotion expenses - Rs. 11,68,438/-
- iv. Interest expenditure - Rs.19,74,55,514/-
- v. Interest on TDS - Rs. 6,37,409/-

3. Aggrieved by the assessment order, assessee preferred an appeal before the First Appellate Authority. The following issues were raised before the First Appellate Authority:

- i. Interest on advance - Rs. 3,63,426/-
- ii. Disallowance of depreciation on land / toll road - Rs.4,10,31,645/-
- iii. Disallowance of advertisement and business promotion expenses - Rs. 11,68,438/-
- iv. Interest on delayed payment of TDS - Rs. 6,37,409/-

4. The CIT(A) confirmed the impugned assessment order. Before the CIT(A), there was no appearance / uploading of the objections to the issues raised before him.

5. Aggrieved by the CIT(A)'s order, the assessee has filed the present appeal before the Tribunal. The learned AR has filed Paper Book comprising of 33 pages enclosing therein the notice issued by the AO under sections 142(1), 143(2) of the Act, details called for by the AO and the replies filed by the assessee. The learned AR fairly submitted that the assessee had mistakenly not uploaded the objections to the additions / disallowance. The learned AR submitted that the major issue that is raised in this appeal, namely depreciation on the land beneath the toll road, has been decided in favour of the assessee by the order of the Tribunal in assessee's own case for Assessment Years 2011-12, 2012-13 and 2014-15 in ITA

Nos.1063, 1064 and 1079/Bang/2018 (order dated 12.08.2020). It was further submitted as regards the details of advertisement and business promotion expenses, the AO had called for the details and assessee had produced the same vide its letter dated 04.12.2018. However, the assessee has not given any opportunity to redress the doubts entertained by AO while making the additions under the above said head.

6. The learned DR has filed a brief written submission, essentially supporting the orders of the AO and the CIT(A).

7. We have heard the rival submissions and perused the material on record. We notice from the impugned order of the CIT(A) that several opportunities were provided to the assessee to upload its objections / contentions. However, the assessee had only uploaded the statement of facts. We find that CIT(A)'s order is ex-parte order since the assessee has failed to upload its objections / contentions with regard to the issues raised before the CIT(A). Moreover, we find the major issue that is raised in the present appeal viz., disallowance of depreciation on land / toll road (which is amounting to Rs.4,10,31,645/-) has been decided in favour of the assessee by the Tribunal order cited supra (in assessee's own case). Therefore, in the interest of justice and equity, since the CIT(A)'s order is an ex-parte order, we are of the view that all the issues raised in this appeal needs to be examined afresh by the CIT(A). The assessee shall co-operate with the Revenue and shall not seek unnecessary adjournment in the matter. The assessee shall upload its objections / contentions to the 3 issues that are restored to the file of the CIT(A) viz.,

- i. Interest on advance - Rs.3,63,426/-
- ii. Disallowance of depreciation on the

	land beneath the toll road	- Rs.4,10,31,645/-
iii.	Disallowance of advertisement and business promotion expenses	- Rs.11,68,438/-

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PADMAVATHY S)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Judicial Member

Bangalore.

Dated: 07.10.2022.

/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.