

आयकर अपीलीय अधिकरण, 'ए' 'SMC' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' / 'SMC' BENCH: CHENNAI

श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.522/Chny/2022
निर्धारण वर्ष /Assessment Year: 2014-15

M/s.Green Leaves Estates-
and Hotels,
Flat No.29, Second Floor,
'Stonedge Towers',
17, 1st Avenue, Ashok Nagar,
Chennai.

v. The Income Tax Officer,
Non-Corporate Ward-13(4),
Chennai.

[PAN: AAJFG 3194 N]
(अपीलकर्ता/Appellant)

(प्रत्यर्थी/Respondent)

अपीलकर्ता की ओर से/ Appellant by : Mr.N.Arjunraj, CA
For Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 19.09.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 18.05.2022 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:

1. The order of the National Faceless Appeal Centre, Delhi dated 18.05.2022 for the above mentioned Assessment Year vide DIN & Order No.ITBA/NFAC/S/2022-23/1043064561(I) is contrary to law, facts, and in the circumstances of the case.

2. The NFAC erred in sustaining the disallowance of Rs.7,01,884/- being 5% of net project expenses of Rs.1,40,37,687/- resulting in confirmation of the addition made as a consequence to the said disallowance in the computation of taxable total income without assigning proper reasons and justification.

:: 2 ::

3. *The NFAC erred in sustaining the disallowance of Rs.1,25,300/- being the expenses incurred as unexplained resulting in confirmation of the addition made as a consequence to the said disallowance in the computation of taxable total income without assigning proper reasons and justification.*

4. *The NFAC erred in sustaining the disallowance of Rs.1,77,608/- being the notional charge of interest on partners' drawings at 12% resulting in confirmation of the addition made as a consequence to the said disallowance in the computation of taxable total income without assigning proper reasons and justification.*

5. *The NFAC erred in sustaining the disallowance of Rs.2,58,719/- being the presumed excess interest paid to partners over and above 12% specified in the partnership deed resulting in confirmation of the addition made as a consequence to the said disallowance in the computation of taxable total income without assigning proper reasons and justification.*

6. *The NFAC failed to appreciate that the entire recomputation of taxable total income on various facets was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.*

7. *The NFAC failed to appreciate that the evidences available on record were not considered in proper perspective and ought to have appreciated that non consideration of relevant facts would vitiate the entire recomputation of taxable total income.*

8. *The NFAC failed to appreciate that there was no proper opportunity given before passing the impugned order and any order passed in violation of the principles of natural justice is nullity in law.*

9. *The Appellant craves leave to file additional grounds/arguments at the time of hearing.*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of civil construction, e-filed its return of income for the AY 2014-15 on 30.11.2014 admitting total income of Rs.5,61,400/-. The assessment has been completed u/s.143(3) of the Act, on 21.12.2016 and determined total income of Rs.18,99,910/- after making addition towards disallowance of 5% of project expenses amounting to Rs.7,01,884/-, disallowance of unexplained expenditure towards audit fees amounting to Rs.1,25,300/-, addition towards interest on excess drawings by partners amounting to Rs.1,77,608/- and disallowance of excess interest paid to partners over and above 12% as specified in the Partnership Deed

:: 3 ::

amounting to Rs.2,58,719/-. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in their appellate order, sustained the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before me.

4. The first issue that came up for my consideration from Ground No.2 of the assessee's appeal is adhoc disallowance of 5% of net project expenses amounting to Rs.7,01,884/-. The assessee has debited project expenses of Rs.4,47,98,390/- which includes the expenses of work in progress, labour contract and purchase of land, etc. Out of the above, an amount of Rs.1,40,37,687/- represents purchase of materials. The assessee could not file necessary supporting evidences for purchase of materials. Therefore, the AO made 5% adhoc disallowance and made addition of Rs.7,01,884/-

5. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It was the explanation of the Ld.Counsel for the assessee that total expenditure incurred towards materials purchased is paid through proper banking channel and also the assessee has filed necessary supporting evidences. However, the AO has made adhoc disallowance without any basis. Therefore, the issue may be set aside to the file of the AO to give one more opportunity to the assessee to explain its case. I find that although the

:: 4 ::

assessee claims to have incurred expenses for materials purchased through proper banking channel, but on perusal of the assessment order, no such details are forthcoming. The assessee explained that total expenditure incurred towards materials purchased is supported by evidences, whereas, the AO claims that the assessee could not file any bills and vouchers. Facts are contradictory. Therefore, I set aside the issue to the file of the AO and direct the AO to re-examine the claim of the assessee in light of arguments of the assessee that expenditure incurred through bank and also the same is supported by necessary evidences.

6. The next issue that came up for my consideration from Ground No.3 of the assessee's appeal is disallowance of unexplained expenditure of Rs.1,25,300/-. The assessee has debited a sum of Rs.1,84,570/- towards audit fees. However, assessee could explain with necessary evidences to the extent of Rs.59,270/-, and thus, the balance amount of Rs.1,25,300/- was unexplained.

7. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Although, the assessee explained before the AO that the balance amount of Rs.1,25,300/- is not audit fees, but a wrong entry has been passed to some other expenses and debited to audit fees, but the explanation of the assessee is unsubstantiated. No evidence has been placed before me to justify its arguments. In my considered view, there is no error in the reasons given

:: 5 ::

by the AO to make addition towards unexplained expenditure towards audit fees and confirmed by the Ld.CIT(A) and hence, I inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

8. The next issue that came up for my consideration from Ground Nos.4 & 5 of the assessee's appeal is addition towards interest on excess drawings by partners and disallowance of excess interest paid over and above 12% as specified in the Partnership Deed towards partners' capital account. The AO has made addition towards 12% interest on partners drawing account on the ground that when the assessee has paid interest on partners' capital account, the assessee ought to have recovered interest from partners current account when such current account is overdrawn and thus, imputed 12% interest on partners current account. Similarly, the AO has disallowed excess interest paid towards partners' capital account over and above the rate specified in the Partnership Deed in terms of Sec.40b(iv) of the Act.

9. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The only argument of the Ld.Counsel for the assessee is that while computing interest on capital account and interest on current account, the AO should have aggregated both capital and current accounts and in case, any over drawings by the partner, then, interest can be computed. Similarly, while computing interest on capital account in excess of 12%, the AO should aggregate the balance appearing in the current account. I find that the

:: 6 ::

arguments of the Ld.Counsel for the assessee appears to be correct. Because, while computing interest on partners' capital and current accounts, the AO should aggregate the capital and current account to ascertain any overdrawing's by partner. Therefore, in my considered view, the issue needs to go back to the file of the AO for further verification and thus, I set aside the issue to the AO and direct the AO to reconsider the issue in light of my discussions given herein above.

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

Order pronounced on the 14th day of October, 2022, in Chennai.

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 14th October, 2022.
TLN

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आकर आकुत (ं पील)/CIT(A)
4. आकर आकुत/CIT
5. विभागीं प्रतिनिधि/DR
6. गार्ड फाईल/GF