

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA No.541/Hyd/2021		
Assessment Year: 2016-17		
M/s. Trinity Infraaventures Limited C/o. P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082 PAN : AABCG1937G	Vs.	ACIT, Central Circle-3(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri Murali Mohan Rao, CA
Revenue by:		Shri Vijay Kumar, CIT-DR
Date of hearing:		13.10.2022
Date of pronouncement:		18.10.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 09.11.2021 of Learned Commissioner of Income Tax (Appeals)-11, Hyderabad relating to AY 2016-17.

2. Although a number of grounds have been raised by the assessee, however, the ld.Counsel for the assessee confined his argument to the addition of Rs.52,150/- towards difference in interest income between P&L account and 26AS and addition of Rs.1 crore made by the AO and sustained by the ld.CIT(A) towards land development expenditure.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of real estate and investment in various associated companies. It filed its original return of income on

15.10.2016 declaring total income of Rs.7,74,650/-. A search and seizure operation u/s. 132 of the I.T.Act was conducted in the case of the assessee and its other associated companies on 09.11.2017. In response to notice u/s. 153A issued on 21.03.2018, the assessee filed its return of income on 11.07.2018 declaring total income of Rs.7,74,650/-. During the course of assessment proceedings, the AO noted that assessee is in the receipt of interest income and has offered an income of Rs.22,13,234/-. However, on verification of the 26AS statement, the AO noted that assessee has received interest income of Rs.22,08,234/- from Allahabad and Rs. 57,150 from Canara Bank totaling to Rs.22,65,384/-. In absence of any satisfactory reply given by the assessee regarding the discrepancy, the AO made addition of Rs.52,150 to the total income of the assessee.

4. The AO further noted from the financials that the assessee has incurred an amount of Rs.1,02,57,500/- towards land development expenses. On being asked by the AO to submit the details of such expenditure the assessee submitted the ledger copy showing the payments made towards land expenses. From the details filed by the assessee the AO noted that an amount of Rs.2,57,500/- has been paid by cheque of Syndiate bank and the remaining Rs.1 crores has been paid to various persons towards land settlement which has been shown as land development and acquisition expenses. It was submitted by the assessee that the lands in question are in dispute and the provisions of section 50C of the I.T.Act are not applicable. Therefore, the AO asked the assessee to explain as to how the assessee is claiming the expenditure incurred towards land development. However, there was no response from the side of the assessee to the query raised by the AO. The AO, therefore inferred that when the assessee has incurred the expenditure, it has become the income of the person receiving it, therefore the assessee cannot claim such

expenditure. In absence of any satisfactory explanation given by the assessee the AO made addition of Rs.1 crore to the total income of the assessee.

5. In appeal, the ld.CIT(A) sustained both the additions. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal.

6. So far as the first issue i.e addition of Rs.52,150/- is concerned, the ld. Counsel for the assessee submitted that the above interest income has been shown in the hands of the sister concern. He submitted that the bank had inadvertently reflected the interest in the hands of the assessee company, whereas subsequently, the same was corrected. He submitted that given an opportunity, the assessee is in a position to substantiate that the income of Rs.52,150/- made by the AO is in fact belongs to the sister concern of the assessee. He submitted that the assessee does not have any account with Canara bank. Therefore, he has no objection if the matter is set aside to the file of the AO for verification of the same and pass appropriate order.

7. The ld. DR on the other hand, while supporting the order of AO and ld.CIT(A) fairly submitted that he has no objection if the issue is restored to the file of the AO for verification.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.52,150/- on the ground that the interest income declared by the assessee is less than the amount of interest shown as per 26AS statement. We find the ld.CIT(A) sustained the addition in absence of any satisfactory explanation

given by the assessee. It is the submission of the ld.counsel for the assessee that the amount of interest received from Canara bank belongs to the sister concern of the assessee whose name is somewhat similar with that of the assessee and the assessee does not have any bank account with the Canara bank. It is also his submission that given an opportunity, assessee is in a position to substantiate with evidence to the satisfaction of the AO that such interest income which belongs to the sister concern of the assessee has in fact been offered by them to taxation. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the AO with a direction go grant an opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The first issue raised by the assessee in grounds of appeal is accordingly allowed for statistical purpose.

9. So far as the second issue is concerned, the same relates to the addition of Rs.1 crore made by the AO out of the expenditure incurred towards land development which has been sustained by the ld.CIT(A).

9.1 The ld. counsel for the assessee, at the outset, submitted that for the AY 2013-14, copy of which is placed at page 71 to 75 of the paper book, the assessee has claimed land development expenses to the extent of Rs.95,86,237/- and the AO disallowed 20% of such expenses which worked out to Rs. 19,17,251/-. In appeal, the ld.CIT(A) sustained the addition and on further appeal by the assessee, the Tribunal vide order ITA No.2178/Hyd/2017 order dated 29.06.2020 restricted such disallowance to 10%. Referring to the copy of order for AY 2014-15, passed u/s. 143(3) r.w.s. 153A, copy of which is placed at page 76 to 82 of the paper book, he submitted that the AO has not disallowed any expenditure under the head land development expenses, although

such expenses were claimed in the as per P&L account at Rs.87,77,950/-, copy of which is placed at page no. 88 of the paper book. Similarly, for AY 2015-16, although the assessee has claimed an amount of Rs.9,97,402/- as per P&L account, copy of which is placed page 90 of the paper book, the AO in the order passed u/s. 143(3) r.w.s. 153A on 28.12.2019 has not made any disallowance. He accordingly submitted that in the light of the decision of the Tribunal in assessee's own case for AY 2013-14, the disallowance should be restricted to 10% and not 100% as made by the AO and sustained by the ld.CIT(A).

10. The ld. DR on the other hand, while supporting the order of the ld.CIT(A) submitted that since the assessee has not submitted full details to the satisfaction of the AO regarding the claim of land development expenses, the AO was fully justified in making the addition of Rs.1 crore and the ld.CIT(A) was justified in sustaining such addition. He submitted that since the assessee has not given any such details, the prayer of the assessee that certain percentage of expenditure should be disallowed cannot be accepted since in future years, the assessee may claim any such expenditure without incurring it and may plead for disallowances of such expenses at a specific percentage. He accordingly submitted that the order of the ld.CIT(A) be upheld and the ground raised by the assessee on this issue should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.1 crore to the total income of the assessee on the ground that the assessee could not substantiate with evidence to his satisfaction regarding the claim of such land development and settlement expenses. We find the ld.CIT(A)

upheld the addition made by the AO. It is the submission of the ld. counsel for the assessee that in AY 2013-14, assessee has claimed land development expenses at Rs.95,86,257/- and the AO disallowed 20% of such expenses at Rs.19,17,251/- which was upheld by the ld.CIT(A) and on further appeal the Tribunal restricted the disallowance to 10%. Similarly, for AY 2014-15 & 2015-16, although the assessee has claimed such land development expenses, no disallowance has been made by the AO in the orders passed u/s. 143(3)/153A. Thus, it is his submission that for the impugned assessment year the entire disallowance made by the AO and sustained by the ld.CIT(A) is not justified.

12. We find merit in the above argument of the ld. counsel for the assessee. We find in AY 2013-14, the assessee has claimed land development expense of Rs.95,86,257/- out of which the AO disallowed an amount of Rs.19,17,251/- being 20% of such expenses in absence of supporting documents and assessee produced only the ledger extract of this expenditure. The ld.CIT(A) sustained the addition and on further appeal by the assessee, the Tribunal vide ITA No.2178/Hyd/2017 order dated 29.06.2020 restricted such disallowance to 20% by observing as under:-

“8. We have heard the rival submissions and perused the material available on record. The issue in the present ground with respect to disallowance of Land Development Expenses on ad hoc basis. It is an undisputed fact that the assessee is in the real estate business and the expenses are on account of "Land Development". It is also a fact that it is not the case of the Revenue that the expenses incurred by it under this head is bogus as is evident by the fact that AO has not disallowed the entire expenses but has only disallowed 20% of the expenses. Considering the totality of the aforesaid facts, we are of the view that the disallowance made by the AO at 20% is at a higher side. We are of the view that the interest of justice shall be met if the disallowance is restricted to 10% of the expenses. We, thus direct accordingly. Thus, the ground of appeal is partly allowed.”

13. We further find although the assessee has claimed such land development expenditure at Rs.87,77,950/- for the AY 2014-15,

no such disallowance has been made in the order passed/s. 143(3)/153A. Similarly for AY 2015-16, although the assessee has claimed such expenses at Rs.9,97,402/-, however, the AO in the order passed u/s. 143(3) r.w.s 153A has not made any disallowance. Considering the totality of the facts of the case and following the decision of the Tribunal in assessee's own case for AY 2013-14, we direct the AO to restrict such disallowance to 10% of the expenses claimed. The grounds raised by the assessee on this issue is accordingly partly allowed.

14. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 18th October, 2022.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
---	--

Hyderabad, dated 18th October, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	M/s. Trinity Infraaventures Limited C/o. P.Murali & Co. Chartered Accountants 6-3-655/2/3 Somajiguda Hyderabad-500 082
2	ACIT, Central Circle-3(2) Hyderabad
3	CIT(A)-11, Hyderabad
4	PrI.CIT(Central), Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order