

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1259/Bang/2018
Assessment Year : 2012-13

M/s. Lepakshi Knowledge Hub Pvt. Ltd., No. 26/1, 1& 2 nd floor, IBIS Hotel, Hosur Road, Bengaluru – 560 068. PAN: AABCL4609G	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Adarsh G, CA
Revenue by	:	Shri Sunil Kumar Singh, CIT-DR

Date of Hearing	:	18-10-2022
Date of Pronouncement	:	20-10-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 14/12/2017 passed by Ld.CIT(A)-4, Bangalore on following grounds of appeal:

1. The orders of the authorities below in so far as these are against the appellant are opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.
2. The appellant denies itself to be assessed on a loss of Rs.5,67,27,103/- as against the returned loss of Rs.8,47,43,356/- under the facts and circumstances of the case.
3. a) The order of assessment is bad in law as the statutory notice for initiating the assessment proceedings under section 143(2) of the Income Tax Act, 1961 (the Act) was not served on the appellant under the facts and circumstances of the case. Not Pressed this ground
At 18/10/2018
- b) The learned CIT(A) failed to consider the affidavit filed by the appellant and consequently, the CIT(A) grossly erred in holding that the notice under section 143(2) of the Act was duly served on the appellant under the facts and circumstances of the case.
- c) The action of the learned CIT(A) in treating the failure to serve the notice under section 143(2) of the Act as mere technicality is fatal to assumption of jurisdiction and thus the assessment needs to be quashed on this ground alone in the interest of equity and justice.
4. The learned CIT(A) erred in confirming the disallowance made by the assessing officer of Rs.2,32,21,079/- as proportionate land development cost under section 40A(2)(a) of the Act under the facts and circumstances of the case.
5. The authorities below failed to appreciate the fact that the land development expenses incurred of Rs.2,32,21,079/- were fully supported ^{by} documentary evidence and thus the expenses ought to have been allowed under the facts and circumstances of the case.
6. Without prejudice, the disallowance made is highly excessive and needs to be substantially reduced under the facts and circumstances of the case.
7. **Grounds on disallowance of depreciation:**
 - a) The learned CIT(A) erred in confirming the disallowance of depreciation on furniture and fixtures of Rs.19,39,176/- under the facts and circumstances of the case.
 - b) The learned CIT(A) erred in confirming the disallowance of depreciation on office equipment of Rs.3,69,299/- under the facts and circumstances of the case.
 - c) The learned CIT(A) erred in confirming the disallowance of depreciation on computers of Rs. 70,112/- under the facts and circumstances of the case.
 - d) The authorities below grossly erred in holding that the furniture & fixtures, office equipment and computers were not put to use under the facts and circumstances of the case.
8. The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.
9. In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant craves that the appeal may be allowed in the interest of equity and justice.

2. The Ld.AR at the outset submitted that the legal issue raised by assessee in Ground no. 3 is not pressed.

Accordingly this ground is dismissed as not pressed.

3. In **Ground nos. 4-6**, the issue alleged by assessee is in respect of the disallowance made by the Ld.AO of Rs.2,32,21,079/-

towards the proportionate land development cost u/s. 40A(2)(a) of the Act.

The primary contention of the assessee is that the computation of disallowance by the Ld.AO that forms part of the assessment order is not in accordance with the Accounting Standards and law. He submitted that, the Ld.AO partly disallowed the opening work in progress and considered the claim of cost of sale from the previous assessment year without any basis. The Ld.AR took us to the relevant observation wherein, the disallowance is computed. For the sake of convenience, the same is scanned and reproduced as under and he submitted that assessee has evidences to establish the expenditure incurred that cannot form part of the disallowance u/s. 40A(2)(a) of the act for the year under consideration.

[On queries, though it was implied by Sri Janardhan Reddy that the first year of sale of land was the F.Y. 2011-12, from the material gathered /available on record it is observed that LKH had sold land to Lepakshi Ayush Park Pvt. Ltd. and Indus Gems Expression in the earlier financial year. Further, financials also show cost of land claimed as an expense

during the A.Y. 2011-12 at Rs. 9,01,425/-. Hence, the same is also considered while computing the disallowance.

The company has sold 232.63 acres of land during the year out of the total land holding of 8841.01. Considering the overall back ground of the company and the back to back transactions with the parties covered under 40A(2)(b), the proportionate claim of cost of land sold during the year to be disallowed is worked out as follows:

Opening work in progress:		Rs. 317,38,28,236
Add:		
Claim of cost of sale in the previous year:	Rs.	9,01,425
Cost incurred upto 11.09.2011:	Rs.	25,09,659 →
Total:		Rs. 317,72,39,320
Less: Opening balances as on 01.04.2011		
Interest	Rs.	56,91,32,268
Consultancy charges:	Rs.	4,20,18,334
Management contract:	Rs.	53,91,40,314
Land cost	Rs. 114,41,41,115	Rs. 229,44,32,031
Total		Rs. 88,28,07,289

Proportionate cost of land disallowed for the year.

$$\frac{232.63 \times 88,28,07,289}{8844.01} = 2,32,21,079$$

In view of the above discussion, Rs. 2,32,21,079/- is disallowed u/s 40A (2)(a) and added to the total income.

4. In respect of **Ground no. 7**, the Ld.AR submitted that depreciation claimed on building and furniture fittings were disallowed by the Ld.AO. for the reason that the same was not put to use, as per the report filed by the Inspector, who visited the premises on 25/03/2015. He submitted that, there are various evidences to establish the claim of depreciation that has not been considered.

5. Based on the above, the Ld.AR submitted that, both the issue needs to be reverified in accordance with law.

The Ld.DR though vehemently supported the orders passed by Ld.CIT(A), could not contradict the fact that the computation by

the Ld.AO regarding the disallowance u/s. 40A(2)(a) is not in accordance with law.

We have perused the submissions advanced by both sides in the light of records placed before us.

6. Based on the submissions by the assessee on both the issues, and without expressing our opinion on merit, we deem it appropriate to remand these issues alleged by assessee for the year under consideration to the Ld.AO for a *denovo* verification, considering the observations by CBI reproduced in the assessment order. The Ld.AO is directed to verify each and every expenses claimed by the assessee and the assessee is directed to furnish the evidences/documents, ledger a/c., cash books if any in support of the claim. The Ld.AO shall consider the claim in accordance with law having regards to the evidences filed in support by the assessee.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, Ground nos. 4-7 filed by assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 20th October, 2022.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 20th October, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore