

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “B” BENCH, BENGALURU**

**Before Shri N.V. Vasudevan, Vice President  
and  
Ms. Padmavathy S., Accountant Member**

<b>ITA No. 1662/Bang/2019</b> (Assessment Year: 2012-13)		
Shri Srinivasa Vinay Babu No. 927/17, 18th A Main Road 5th Block, Rajaji Nagar Bangalore 560010 PAN – AZUPS7151D (Appellant)	vs	Income Tax Officer-2(2)(2) 1st Floor, BMTC Building 80 Feet Road, Koramangala Bengaluru 560095 (Respondent)

Assessee by:	None
Revenue by:	Shri K.R. Narayana, Addl. CIT-DR

Date of hearing:	24/11/2022
Date of pronouncement:	28/11/2022

**ORDER**

**Per: Padmavathy, A.M.**

This is an appeal filed by the assessee against the order of the learned CIT(A), 2, Bengaluru dated 28.02.2010 for AY 2012-13.

2. The assessee is an individual engaged in the business of real estate development. For the assessment year 2012-13, the assessee filed the return of income on 04.10.2012 declaring an income of Rs.9,20,279/-. The case was selected for scrutiny and the AO completed the assessment by making an addition of Rs.1,22,80,674/- by estimating a profit at 8% of the amount spent towards work-in-progress on the basis that income has accrued to the assessee under percentage completion method of accounting. The AO further made disallowance under Section 40(a)(ia) of the Income Tax Act, 1961 (the Act) for non deduction of TDS on commission payment of Rs.1,86,42,864/- and an

adhoc disallowance of Rs.1,45,00,000/- towards other expenses for the same reason that TDS is not done.

3. Aggrieved, the assessee preferred an appeal before the CIT(A). The CIT(A) after considering the various submissions of the assessee gave partial relief to the as by re-computing the income of the assessee as given below: -

Advance received from Customers till 31.03.2012		32,95,69,924
Less : Total expenses shown under CWP		<u>22,01,51,132</u>
Net Income		10,91,18,792
Add: Disallowances	1,86,42,864	
	<u>1,45,00,000</u>	<u>3,31,42,864</u>
Net Income after disallowances		<u>14,25,61,656</u>
Estimated income accrued to the assessee – 20%		2,85,12,331
Income computed by the AO		4,63,43,820
<b>Relief given</b>		<b><u>1,78,31,489</u></b>

4. The assessee is in appeal before the Tribunal being aggrieved by the order of the CIT(A). Through various grounds of appeal the assessee is praying for the income to be recomputed at Rs.79,53,430/- for which the below computation was submitted.

PARTICULARS	AMOUNT(Rs.)
A. Total Collections till 31st March 2012 from the beginning	32,95,69,924
1. Work In Progress as on 31st March 2012	22,01,51,132
2. Land advance given for the projects paid during the year, (last year no advances were there)	7,89,82,315
B. Cumulative Work in progress(1+2)	29,91,33,447
Net Cumulative Profits Until 31st March 2012 (A-B)	3,04,36,477
Add: Disallowance u/s 40(a)(ia)	
a. Commission payments Disallowed as per Assessment Order	1,86,42,864
b. Other Disallowances	20,00,000
<b>Total Cumulative Profits after Disallowance</b>	<b>5,10,79,341</b>
40% of the Profits based on Percentage Completed	2,04,31,736
Less : Amount of Profits already declared in the previous year as per Appeal Order	1,24,78,306
Income From Business	<b>79,53,430</b>

5. Before us none appeared for the assessee. The learned D.R. submitted the copies of hearing notice sent to the assessee and the same is taken on record. We proceeded to adjudicate the appeal based on the statement of facts and grounds of appeal submitted by the assessee.

6. The learned D.R. relied on the order of the CIT(A).

7. From the perusal of the workings of the CIT(A) while giving relief and the statement of business of income submitted by the assessee before us, we notice that the issues for our consideration are:

- i. Land advance given for the projects paid during the year – Rs.7,89,82,315/-.
- ii. The adhoc disallowance should be Rs.20,00,000/- and not – Rs.1,45,00,000/-
- iii. Deduction towards projects already declared – Rs.1,24,78,306/-

8. On the issue of land advance, we notice that the amount has not been claimed by the assessee before the lower authorities. In fact the assessee has submitted a computation before the CIT(A) similar to the one submitted before the Tribunal in which the assessee has declared the business income to be Rs.2,56,04,004/- (refer page 4 of CIT(A) order). Before the AO the assessee has submitted payments made accounted under work-in-progress to be Rs.22,01,51,132/- and not the land advance given. In view of this it is clear that this is a fresh claim made by the assessee which has not been presented before the lower authorities. We therefore remit this issue back to the AO to verify this claim and decide the allowability in accordance with law.

9. With regard to the adhoc disallowance of Rs.1,45,00,000/- the assessee submitted before the CIT(A) that as per notice dated 06.03.2015 the AO had originally proposed a disallowance of Rs.20,00,000/- but in the notice on

20.03.2015 the disallowance was enhanced to Rs.1,45,00,000/-. The assessee in the computation of business income submitted had conceded for the disallowance of Rs.20,00,000/-. It was also prayed by the assessee before the CIT(A) that Rs.1,45,00,00,000/- disallowance is very high compared to the quantum of expenses against which the disallowance is made under Section 40(a)(ia) of the Act. It is noticed that the AO had asked the assessee to produce the details of TDS with respect to the following expenses: -

- |                                   |                  |
|-----------------------------------|------------------|
| i. Advertisement                  | - Rs.6,07,665    |
| ii. Car hire charges              | - Rs.27,13,886   |
| iii. Land development charges     | - Rs.27,13,886   |
| iv. Printing & stationery charges | - Rs.5,48,93,350 |

10. It is also noticed that the AO proceeded to make an adhoc disallowance of Rs.1,45,00,000/- since the assessee has not furnished any details with regard to TDS. We are therefore of the view that this issue should be remanded to the AO for proper verification of TDS details and allow the actual expenses incurred in accordance with laws. The assessee is directed to submit the relevant details pertaining to the tax deducted at source and cooperate with the proceedings. It is ordered accordingly.

11. The last issue is with regard to the deduction claimed as amount of project already declared in the previous year for Rs.1,24,78,306/- The assessee has not brought anything on record in support of this amount, and from the perusal of CIT(A)'s and AO's orders also we are noticing that the assessee has not declared this amount as already declared. In fact the assessee has submitted before the CIT(A) an amount of Rs.19,98,860/- (refer page 3 of CIT(A)'s order) as the profits declared in AY 2010-11. Therefore the basis on which this revised amount is claimed by the assessee needs verification. We therefore remit this issue also to the AO for verification of the claim of the

assessee based on evidences and supporting documents and allow the claim if already offered to tax.

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

Dictated and pronounced in the open Court on 28<sup>th</sup> November, 2022.

Sd/-

**(N.V. Vasudevan)**  
**Vice President**

Sd/-

**(Padmavathy S)**  
**Accountant Member**

Bengaluru, Dated: 28<sup>th</sup> November, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Bengaluru*
4. *The PCIT - 2, Bengaluru*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

*By Order*

*Assistant Registrar*  
*ITAT, Bengaluru*

n.p.