

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

**BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No.690/Bang/2022 |
| Assessment year : 2018-19 |

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| Davalagiri Property Developers Pvt. Ltd., Prerana Chambers, No.26, 2 nd Floor, Nehru Nagar, Main Road, Kumar Park West, Bangalore - 560 020. PAN - AACCD 3574 A | Vs. | The Dy. Commissioner of Income Tax, CPC, Bengaluru. |
| APPELLANT | | RESPONDENT |

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|-------------|---|-----------------------------------|
| Assessee by | : | Shri A Ravish Rao, C.A |
| Revenue by | : | Shri K.R Narayana, Addl. CIT (DR) |

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| Date of hearing | : | 23.11.2022 |
| Date of Pronouncement | : | 14.12.2022 |

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This appeal filed by the assessee is against the order of National e-Assessment Center (NFAC) dated 08/06/2022 with the following grounds of appeal:-

"1. The impugned order under Appeal is for the AN 2018-19 and the same is opposed to Law and facts of the case for the contentions raised hereunder.

2. The Hon'ble CIT (Appeals) has erred in Law by upholding the order of the CPC bringing into taxation of the Partnership Income to the extent of Rs 39,25,098/- which is exempt under section 10(2A) of the Income Tax Act 1961.

3. The Hon'ble CIT (Appeals) has erred in Law, by upholding the disallowances of losses, carry forwarded from previous years amounting to Rs.12,90,274/-

4. The Hon'ble CIT (Appeals) has erred in Law, by upholding the Charge of Interest U/s 234 A, 234B and 234C of the Income Tax Act 1961

5. For the Grounds set forth herein above and such other grounds and arguments that may be urged during course of the Appellate proceedings, this Honorable Court may be pleased to set aside the tax on exempted income and cancel the levy of interest."

2. The brief facts of the case are that the assessee filed return of income on 29/10/2018 declaring a total income of Rs.34,02,778/- after claiming exemption from partnership firm u/s 10(2A) of Rs.39,25,098/-. The income from house property was shown at Rs.46,93,052/- and profit and gains from business or profession was claimed as loss of Rs.12,90,274/-. The return was processed u/s 143(1)(a) of the Act and exemption claimed u/s 10(2A) of the Act was denied to the assessee. Consequently, the loss claimed from business and profession was also denied to the assessee because it was set off due to disallowance of exemption claimed by the assessee.

3. Feeling aggrieved from the order of the CPC, the assessee filed appeal before the CIT(A).

4. The CIT(A) dismissed the appeal of the assessee by observing as under:-

"6.2 Further, the assessee stated that M/s. Akarsha Properties had profit before tax of Rs. 78,50,201/- and the share of profit of the assessee company was Rs. 39,25,101/-. Further, the assessee stated that the said partnership firm had no income as per ITR filed because the firm had brought forwarded losses during the previous years and the same were set off during the said year as per the provisions of the I.T. Act.

6.3 It is observed that the assessee has shared the profits of the partnership firm before setting off the losses brought forward, which is not permissible. The firm in which the assessee is a partner, must have set off the brought forward losses and arrived at the actual profit during the year and then partners should have

shared the profits after making due taxes. In this case, actual profit of the firm is NIL and thus nothing to share among the partners. The assessee's claim u/s 10(2A) cannot be allowed in absence of any profit in the partnership firm. Appeal is dismissed."

5. Aggrieved from the order the CIT(A), the assessee filed appeal before us.

6. The ld.AR submitted that during the impugned assessment year, the partnership firm earned income of Rs.78,50,201/-, which was taxed in the hands of partnership firm, which is evident from the computation of income placed at appeal set page No. 36 to 50, and referred to the computation of income. There was loss on the previous year, which has been set off for computing tax of the partnership firm and there was no profit after setting off of the losses. As per the accounting adopted by the assessee, there was profit of Rs.78,50,201/-, which has been divided equally by both the partners. On the previous assessment years, the losses has also been accounted by the assessee company, which has not been claimed as a loss while computing the income of the assessee. The assessee filed paper book containing pages 1 to 80, which is placed on record. The assessee has relied on the Judgment of Hon'ble Karnataka High Court in the case of Vidya Investments and Trading Co. Pvt. Ltd., Vs. UIO & Others reported in [2014] 367 ITR 33.

7. On the other hand, the ld.DR relied on the order of the lower authorities and he submitted that in the partnership firm, there was no distributable profit. He referred to the computation of income filed by the assessee, which is placed at appeal set page No.37 and there was profit of Rs.93,55,014/- and after settling off brought forward losses the total income from business and profession is Nil,

therefore, distributable profit is also Nil. In view of this, the assessee is not eligible to claim exemption as per section 10(2A) of the Act. The CIT(A) has rightly decided the issue.

8. After hearing both the sides and perusing the entire material on record and orders of the authorities, we observe that the assessee is a partner in Akarsh Property of 50% in the profit/loss and during the impugned assessment year, the assessee has received a share of profits from the partnership firm of Rs.39,25,098/-, which is included in his financial statements. On going through the computation of income filed by the assessee placed at paper book page No. 51 to 55, the assessee has included it in his net profit while arriving the profit of the business and the same has been reduced from the business profit because it is exempt income.

9. Further, on going through the financial statements of the partnership firm, the firm has earned income during the impugned assessment year, which has been divided by both the partners. In the computation of income of the partnership firm, there was no income under the head 'business and profession', since the partnership firm was showing loss in the earlier years, which has been brought forwarded and while computing tax of the partnership firm, the same profit has been set off. As per the income-tax Act, there was no distributable profits but in real theory in the impugned assessment year, partnership firm has earned profit. We also gone through the previous year's financial statements i.e assessment year 2016-17 and 2017-18. In the assessment year 2016-17, the partnership firm has suffered a loss, which has been divided by both the partners equally and the loss has been included in the financial statements and while

computing taxable income of the assessee, the same has been added back under the head 'other additions', which is evident from the computation of income filed by the assessee as directed by the bench. The assessee has not got any undue benefits. Considering the totality, facts and circumstances of the case, the assessee is eligible to claim exemption as per sec. 10(2A) of the Act on the profit received from the partnership firm. In view of this, the computation of income filed by the assessee is correct. Accordingly, appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in court on 14th day of December, 2022

Sd/-

(George George K)
Judicial Member
Bangalore,
Dated, 14th December, 2022
/ vms /

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
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8. Date on which the file goes to the Bench Clerk
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endorsement.....
10. Date on which the file goes to the Head Clerk
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11. The date on which the file goes to the Assistant
Registrar for signature on the order
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12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
13. Date of Despatch of Order.
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