

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **199/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2018-19

SSM Builders and Promoters,
Plot No. 78, II Main Road,
Nagappa Nagar,
Chrompet,
Chennai – 600 044.

[PAN: ACCFS-3394-P]

(अपीलार्थी/Appellant)

The Income Tax Department,
v. National E-Assessment Centre,
Delhi.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Yeshwanth Kumar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 28.06.2023

घोषणा की तारीख/Date of Pronouncement

: 28.06.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 23.12.2022 and pertains to assessment year 2018-19.

2. The brief facts of the case are that, the appellant is a firm engaged in the business of construction activity. The assessee

has filed its return of income for the assessment year 2018-19 on 31.10.2018, admitting a total loss of Rs. 21,02,74,487/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has paid interest on capital accounts of partners over and above the rates specified in partnership deed, in violation of provisions of section 40(b) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus, after considering relevant submissions of the assessee disallowed a sum of Rs. 9,50,68,042/- towards interest paid on partners capital account. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Id. CIT(A), for the reason stated in their appellate order dated 23.12.2022 dismissed appeal filed by the assessee and sustained additions made towards disallowance of interest on partners capital account. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

3. The Ld. Counsel for the assessee, referring to notice u/s. 250 of the Act, issued by the NFAC, Delhi, dated 20.12.2022 submits that the CIT(A) directed the assessee to submit relevant details on or before 23.12.2022. The assessee has filed a petition for admission of additional evidences u/r. 46A of the

Income-tax Rules, 1962, on 23.12.2022, but the CIT(A) without considering petition filed by the assessee has dismissed appeal vide their order dated 23.12.2022, in violation of principle of natural justice. Therefore, he submits that one more opportunity of hearing may be given to the assessee to file necessary evidence to justify its case.

4. The Id. Sr. DR, AR V Sreenivasan, Addl. CIT, submits that since the CIT(A) has not considered petition filed by the assessee u/r. 46A of I.T. Rules 1962, the matter may be set aside to the file of the lower authorities to give one more opportunity of hearing to the assessee.

5. We have heard both the parties and considered relevant material available on record. We find that although the Id. CIT(A) gave time to the appellant to submit necessary details on or before 23.12.2022, but the appeal filed by the assessee has been dismissed on 23.12.2022 itself, even though the assessee has filed petition for admission of additional evidence u/r. 46A of I.T. Rules, 1962, on 22.12.2022 itself. In our considered view, the CIT(A) has dismissed appeal filed by the assessee without considering the petition filed by the assessee, in violation of principle of natural justice and thus, we are of the considered

view that the issue needs to go back to the file of the Assessing Officer to consider additional evidence filed by the assessee to justify its case, in respect of disallowance of interest on partners capital account. Thus, we set aside the order passed by the CIT(A) and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue denovo in accordance with law, after providing reasonable opportunity of hearing to the assessee. Needless to say, the assessee shall furnish necessary details without seeking any adjournment.

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

Order pronounced in the Open Court on 28th June, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF