

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

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA Nos.215 & 216/Hyd/2023		
Assessment Years: 2017-18 & 2018-19		
Tirumala Estates C/o Mohd Afzal, Advocate #402, Sherson's Residency 11-5-465, Criminal Court Road, Red Hills, Hyderabad-500 004 PAN : AAAFT9809N (Appellant)	V s.	ITO, Ward-4(5) Hyderabad (Respondent)
Assessee by:		Shri Mohd Afzal, Advocate
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		24.05.2023
Date of pronouncement:		25.05.2023

ORDER

Per Shri Laliet Kumar, JM:

These two appeals are filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi dated 14.02.2023 & 09.03.2023 for the AY 2017-18 & 2018-19 respectively, on the following grounds

1. *The order of the learned Commissioner (Appeals) of Income Tax is against the law, wight of evidence and probabilities of case.*
2. *The learned Assessing Officer/Centralized Processing Centre erred in disallowing a loss of Rs. 11,95,881/- and further the learned Commissioner also erred in confirming such order.*
3. *The learned Commissioner erred in confirming the order of the AO/CPC wherein, refund claimed at Rs. 14,24,744/- is reduced to Rs. 45,175/- without any reason.*
4. *The learned Commissioner ought to have directed the Assessing Officer to allow the entire claim of refund of Rs. 14,24,744/- along*

with interest u/s. 244A of the I.T.Act, therefore, erred in confirming the order of the AO/CPC

5. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.

2. The ld. AR, had drawn our attention to the facts of the case which are available at page 5 of the order to the following effect:

The assessee is a partnership firm, however, as per the directions of the Hon'ble ITAT in assessee's own case in ITA No.418/Hyd/2004, dt: 22.06.2005, wherein, the Hon'ble ITAT followed the order of the Hon'ble AP High Court in the case of CIT AP-III Vs Phabiomal & Sons, case referred No.118 of 1980, dt: 29.11.1984, held that as the income of the assessee in the nature of rents and maintenance charges received to be assessed u/s 26 of the IT Act, the said income is to be assessed in the hands of each of the co-owner in accordance with the provisions of the section 26. Therefore, accordingly no income is offered in the hands of assessee which is being assessed in the hands of co-owners and refund is claimed as the same is deducted in the name of partnership firm. For the subject assessment year the assessee claimed refund of Rs.14,24,740/- and current year's loss was claimed at Rs.11,95,881/-, the return of income was filed on 23.03.2018. The CPC processed the return of income u/s 143(1) and issued intimation in communication reference No.CPC/1718/A5/1886054632 dt: 28.03.2019, determining the refund at Rs.48,107/-, including interest u/s 244A of the IT Act, as against the total claim of Rs.14,24,740/-. TDS was given credit only to an extent of Rs.45,175/- in the said intimation.

The TDS as per 26AS and also claimed by the assessee in the return of income is at Rs.14,24,740/- (copy of the Form 26AS is herewith enclosed). No reason has been given in the intimation for curtailing the refund to Rs.45,175/-, as against the claim of Rs.14,24,740/-. Considering the facts and circumstances of the case and the corresponding income from rents and maintenance is offered and assessed in the hands of partners as per provisions of section 26 of the IT Act and the reflection of TDS in Form 26AS of the partnership, the Hon'ble Commissioner is requested to direct the Assessing Officer to issue balance of refund of Rs. 13,79,565/- (14,24,740/- - 45,175) along with interest u/s. 244A of the I.T.Act.

In case the Hon'ble Commissioner needs any further clarification the assessee is obliged to furnish the same.

3. The Ld.AR had submitted that the ld.CIT(A) has dismissed the grounds on the pretext that the receipt of money is chargeable in the hands of assessee as income. It was submitted that the matter has earlier been adjudicated by the Tribunal in ITA No.

418/Hyd/2004, order dated 26.06.2007 wherein it has held as under:-

12. We have heard rival contentions The undisputed facts of the case are that the partners had in their individual capacity purchased several piece of land in the years 1992, 1993 and 1994 which was much before they entered into partnership on 28-12-1994. These individual properties were contributed into the firm. In the assessment order, tie AO states as follows:-

"In fact, the sale consideration of the last flat in the residential complex was admitted in the Asst. Year 1999-200. After that the firm did not venture into new projects. Practically the firm did not carry on business of promoting real estate flats/commercial complex after this. When the business is not carried on, the partners cannot claim the interest on capital as allowed u/s. 40(b) of I.T.Act." (Emphasis is supplied)

The firm had constructed a residential complex and sold away all the flats prior to the impugned assessment year. For .he asst. year under consideration and all the years (six years) thereafter, till (ate the only income that the assessee received was rental income from commercial property constructed and let out as well as income towards maintenance charges. The assessee claimed that the maintenance charges were collected for providing lift service, watch and ward, cleaning and lighting of common areas. maintenance of bore-well and water supply etc. This was charged from tenants in addition to the lease, amounts mentioned in the lease agreement. The assessee claimed that the maintenance charges collected from the tenants" were business income and after claiming expenditure against business income, declared loss from business of maintenance. The AO refused to treat. the maintenance as assessee's business and held that no business was carried on by the assessee. With this factual background that the assessee had neither carried on business during the ast. Year under consideration nor in all the subsequent asst.years, we give our findings as follows.

and thereafter, the Tribunal in ITA Nos. 1510 to 1512/Hyd/2016 vide order dated 26.04.2017 had again directed as under:-

8.1 The CIT(A) instead of following the decision of the Tribunal in assessee's own case, upheld the action of the AO in taking the income in the hands of the firm. Therefore, following the observations of the co-ordinate Bench, we set aside the order of the ld.CIT(A) and delete the disallowance of Rs. 16,20,000/- made by the AO on account of interest paid to partners in the hands of the assessee and for all the three years under consideration with a direction to redo the assessment in line with the direction of the coordinate bench afresh.

4. The AR submitted that it was incumbent upon the lower authorities to follow the directions of the Tribunal. It was submitted by the AR that the matter may be remanded back to the file of the AO for the purpose of giving effect to the order passed by the Tribunal in ITA No.418/Hyd/2004 & ITA Nos. 1510 to 1512Hyd/2016 in the earlier round of litigation.

5. Per contra, the ld.DR relied upon the order passed by the lower authorities.

6. We have heard the rival contentions of both the parties and perused the material available on record. The Tribunal vide its earlier order (ITA No. 418/Hyd/2004) & ITA Nos.1510 to 1512/Hyd/2016, order dated 26.04.2017 has decided the issue in the manner reproduced hereinabove:

7. Undoubtedly, the lower authorities are bound to give effect to the directions issued by the Tribunal and compute the income of the assessee in accordance thereof. Admittedly, the above said exercise has not been carried out by the lower authorities in accordance with the said above directions. Hence, we deem it appropriate to remand back the matter again to the file of the AO with the direction to give effect to the direction of the Tribunal reproduced hereinabove and pass the appropriate order in accordance thereof. We express our anguish to the continuous non-compliance of the order of the Tribunal. Let this issue be

brought to the notice of concerned authority. In light of the above, the appeals of the assessee are allowed for statistical purposes.

8. In the result, both appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 25th May, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 25th May, 2023.

Thirumalesh/sps

Copy to:

S.No	Addresses
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2	ITO, Ward-4(5) Hyderabad
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order