

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1282/Mum./2023

(Assessment Year : 2011-12)

Chourangi Builders & Developers Pvt. Ltd.
3/341, Rajib CHSL, Bandra Kurla Complex
Bandra, Mumbai 400 051 PAN – AADCR4517R

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-10(1), Mumbai

..... Respondent

Assessee by : Ms. Vandana Sawant
Revenue by : Shri K.C. Selvamani

Date of Hearing – 23/08/2023

Date of Order – 28/08/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

"GROUND NO.1

The Hon CIT(A) NFAC, erred in upholding the order of the DCIT - 10(1) u/s. 143(3) of the Income Tax Act, 1961, though it is passed without a proper consideration and appraisal of the facts of the case. An incorrect and improper order has been passed, which has been upheld by the CIT(A). without considering the appellants contentions. It

is capricious in nature and has been made ignoring the genuine facts, with an intention to punish the appellant, and should be quashed and annulled.

GROUND NO.2

The Hon CIT(A) erred in upholding the disallowance of donation of Rs.77,13,000/- by the Ld. DCIT. debited to Work in Progress account. The learned DCIT disallowed opening balance of Rs.76,78,000/- which was already disallowed while passing the assessment order for A.Y. 2010-11. The same is unjust, unfair and not as per the applicable provisions of the Act.

GROUND NO.3

The Hon CIT(A) has erred in the upholding an adhoc addition of Rs.2,00,486/-, being 30% of the following expenditure disallowed on the basis of presumption, conjecture and surmises. The same is unjust, unfair and not as per the applicable provisions of the Act.

<i>Head of Expenditure</i>	<i>Total Expenditure Incurred</i>	<i>30% disallowed</i>
<i>Housekeeping charges</i>	<i>Rs.3,18,735</i>	<i>Rs.95,621</i>
<i>Staff Welfare</i>	<i>Rs.45,948</i>	<i>Rs.13,784</i>
<i>Office & Administrative Expenses</i>	<i>Rs.2,92,471</i>	<i>Rs.87,741</i>
<i>Miscellaneous</i>	<i>Rs.11,033</i>	<i>Rs.3,310</i>
	<i>Total</i>	<i>Rs.2,00,456</i>

GROUND NO.4

The Hon CIT(A) erred in upholding the disallowance of Rs. 2,55,894/-, being 10% of diwali expenditure contending it to be incurred for non-business purpose on the basis of presumption, conjecture and surmises. The same is unjust, unfair and not as per the applicable provisions of the Act.

GROUND NO.5

The Hon CIT(A) erred in upholding the disallowance of interest expenditure of Rs.76,882/- debited to Work in Progress account u/s 36(1)(iii) of the Act. The same is unjust, unfair and not as per the applicable provisions of the Act.

GROUND NO.6

The Hon CIT(A) erred upholding the reduction of Work in Progress by Rs.44,92,66,970/, being TDS not deposited till the filing of return of income, pursuant to the provisions of section 40(a)(ia) of the Act.

GROUND NO.7

The Hon CIT(A) erred upholding the issuance of penalty u/s 271(1)(c) of the Act. It is totally unfair and unjust to make an assumption that the appellant has tried to furnish inaccurate particulars of income or concealed its income."

3. The brief facts of the case as emanating from the record are: The assessee is a private limited company and is engaged in the business of construction and development. For the year under consideration, the assessee filed its return of income on 20/09/2011, declaring a total loss of Rs.70,65,171. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the year under consideration, apart from the income generated from the construction contract, the assessee was engaged in the development of a housing project at Nagpur, and expenses related to that project were shown as WIP, as the assessee adopted Project Completion Method for revenue recognition. The assessee credited the profit and loss account with the income generated from the completed construction contract and other income. During the year, the assessee debited Rs.77,13,002 to the WIP at Nagpur. The assessee was asked to explain with supporting documents as to why the same be not disallowed on account that the donation does not qualify as a deduction against business income under section 32-37 of the Act. In the absence of any explanation by the assessee, the AO vide order dated 29/03/2014, passed under section 143(3) of the Act disallowed the donation of Rs.77,13,000, being not eligible for deduction as the assessee failed to prove the nexus between the expenses incurred and business purpose for incurring such expense. Further, the AO noted that the assessee has debited certain expenses under the head "*administrative expenses*". Since the majority of the expenses were incurred in cash on self-made vouchers, the AO disallowed 20% of these expenses and added an amount of Rs.2,00,486, to the total income of the assessee. Further, on

perusal of extracts of ledger account of Diwali expenses, the AO found that the assessee debited an amount of Rs.25,58,939, for the purchase of gold coins as Diwali gifts. As per the assessee, it gifts gold coins to various individuals as an acknowledgement of the support to the business and to generate goodwill for the business. The AO did not agree with the submissions of the assessee and proceeded to disallow 10% of the expenses on gold coins and added a sum of Rs.255,894, to the total income of the assessee. Further, it was observed that the assessee has debited an interest of Rs.28,27,000, in its profit and loss account. As per the assessee, it has advanced interest-free loans to the directors. Accordingly, the assessee was asked to explain as to why the proportionate interest expenses should not be disallowed. In response thereto, the assessee submitted that the advances have been given to the directors for the business needs and therefore the interest paid has been utilised for earning business income and hence no disallowance is required. The AO did not agree with the submissions of the assessee and made an addition of Rs.76,882, as interest expenses attributable towards interest-free loans advanced to the directors.

4. In the appeal before the learned CIT(A), despite various notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 28/02/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. It is evident that the learned CIT(A) has passed the order

ex-parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee has duly represented and wishes to pursue the litigation against the addition made by the AO. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee on merits do not call for adjudication at this stage. As is evident from the record, during the assessment proceedings also the assessee did not file complete details regarding various additions made by the AO. Since a considerable amount of time and money has been spent by the Revenue in carrying out the scrutiny assessment followed by the appellate proceedings, therefore, we deem it appropriate to impose a cost of Rs.5,000, on the assessee for its lackadaisical approach. We direct that the aforesaid cost be paid by the assessee towards the Prime Minister's Relief Fund within 30 days from the date of receipt of this order. With the above directions, we set aside the impugned order. As a result, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 28/08/2023

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/08/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai