

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

ITA Nos.236 to 238/Hyd/2023		
Assessment Years: 2012-13, 2014-15 & 2017-18		
M/s. Lanco Enterprises (P) Ltd, Gurgaon PAN:AABCL9304L (Appellant)	Vs.	Dy. C. I. T. Circle 5(1) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Smt. T.H Vijaya Lakshmi, CIT(DR)	
Date of hearing:	20/12/2023	
Date of pronouncement:	28/12/2023	

**ORDER**

**Per R.K. Panda, Vice-President**

The above 3 appeals filed by the assessee are directed against the separate orders dated 20.02.2023 of the learned CIT (A) NFAC, Delhi relating to A.Y 2012-13, 2014-15 & 2017-18 respectively. For the sake of convenience, these three appeals were heard together and are being disposed of by this common order.

**ITA 236/Hyd/2023 – A.Y 2012-13**

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of management consultants, supply of raw material, civil works and contract works in the nature of service sector. It filed its return of income for the impugned A.Y on 29.09.2012 declaring loss of Rs.(-)56,91,166/-.

The return was selected for scrutiny through CASS and accordingly statutory notices u/s 143(2) and 142(1) were issued and served on the assessee. The A.R of the assessee filed very scanty details and thereafter there was no compliance for which the Assessing Officer proceeded to complete the assessment u/s 144 of the I.T. Act.

3. The Assessing Officer noted that the assessee has declared gross receipts of Rs.97,76,16,526/- and claimed expenses of Rs.97,72,80,961/- under various heads against the above various gross receipts. The assessee in the P&L Account has declared a net profit of Rs.3,35,565/- on a turnover of Rs.97,76,16,526/- which leads to a net profit rate of 0.03%. Since the assessee did not produce the details to substantiate various expenses debited in the P&L Account such as purchases, employee benefits, operative and administrative expenses, etc., and since the net profit rate declared by the assessee is very low, the Assessing Officer adopted the profit rate of 20% on the turnover. While doing so, he observed that the average net profit rate in the services sector of similar kind is around 25%. Accordingly, he made addition of Rs.19,51,87,740/- on account of estimation of gross receipts.

3.1 The Assessing Officer similarly noted from the P&L Account and the balance sheet that the assessee has made investment in equity shares of its associated company which is for earning exempted income. Further, there is expenditure on account of interest and there is nothing on record to suggest that no part of such interest was incurred in relation to the investment made in equity shares. Therefore, applying the provisions of

section 14A r.w. rule 8D, the Assessing Officer made disallowance of Rs.1,29,522/-.

4. Similarly, on account of non-furnishing of details for addition to fixed assets, the Assessing Officer disallowed depreciation on Car claimed at Rs.4,63,725/-, A.C at Rs.20,815/- and Life Fitness Home Use X8 at Rs.48,093/-. He also disallowed ROC fee expenses of Rs.14,875/- and advisor fee of Rs.5,50,00,000/-. Thus, the Assessing Officer made addition of Rs.25,08,64,752/- under various heads and accordingly determined the total income of the assessee at Rs.24,51,73,586/-.

5. In appeal, the learned CIT (A) NFAC upheld all these additions.

6. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

*“1. The order of the Ld. CIT(A) is erroneous both on facts and in law to the extent it is prejudicial to the interest of the appellant.*

*2. The Ld. CIT(A) ought to have appreciated the fact that AO erred in not serving the assessment order till date. We have obtained the Xerox copy of the assessment order when we attended hearing for penalty notice for the AY.2012-13.*

*3. The Ld. CIT(A) ought to have appreciated the fact that AO erred in invoking the provisions of sec 144 of the Act when there is no failure on the part of the assessee to furnish the relevant information and when reasonable opportunity of being heard was not provided to the assessee.*

*4. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in rejecting the books of account and making addition of Rs.19,51,87,740/- by estimating income of the assessee at 20% of gross turnover when the assessee has*

*maintained and submitted all the supporting ledgers, bills and vouchers relating to its turnover.*

*5. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in estimating income without appreciating the fact that the books of account of the assessee are subject to statutory audit as per Companies Act, 1956 and tax audit u/s 44AB of the Income tax Act.*

*6. The Ld. CIT(A) ought to have appreciated the fact that the AO erred in making disallowances under the head business income without appreciating the fact that once the books are rejected and income is estimated on the basis of gross turnover, no other disallowances from the expenditure debited to P&L a/c are warranted to be made by AO with regard to the extant items in the P&L A/c. In this regard, reliance is placed on Teja Constructions v. ACIT, ITA No.308/HYD/2009.*

*7. The Ld. CIT(A) ought to have appreciated the fact that the A.O erred in disallowing an amount of Rs.1,29,5222/- u/s 14A of the Income Tax Act, 1961 without considering the submissions made by the appellant company especially when only gross receipts were considered for estimating the net profit without considering any expenditure debited to P/L a/c.*

*8. The Ld.CIT(A) ought to have appreciated the fact that AO erred in invoking the provision of sec 14A without considering the fact that the investment made by the appellant company are for the purpose of business expediency and no exempt income is earned by assessee.*

*9. The Ld. CIT(A) ought to have appreciated the fact that the dividend by private companies are subject to tax in the hands of shareholders and hence section 14A should not be invoked as income is not exempt from tax and forms part of total income.*

*10. The Ld. CIT(A) ought to have appreciated the fact that AO erred in disallowing the depreciation claimed on life fitness use XB of Rs.48,093/ without appreciating the fact it is wholly and exclusively used for the business purpose.*

*11. The Ld. CIT(A) ought to have appreciated the fact that AO erred in disallowing the depreciation on car of Rs.4,63,725/- without appreciating the fact that the car is exclusively used in the regular course of business and the assessee is maintaining relevant bills and vouchers.*

*12. The Ld. CIT(A) ought to have appreciated the fact that AO erroneously disallowed depreciation of Rs.20,815/- on air conditioner without appreciating the fact that the*

*assessee uses the same in the business premises and is maintaining relevant bills and vouchers.*

*13. The Ld. CIT(A) ought to have appreciated the fact that A.O erred in disallowing an amount of Rs.14,857/- towards ROC fees for increase in authorized share capital without considering the fact that increase in capital is to meet and boost the working capital requirements necessary for the business.*

*14. The Ld. CIT(A) ought to have appreciated the fact that the expenditure is incurred to boost the working capital and the same is incurred wholly exclusively for the purpose of business. Hence, the same is allowable business expenditure u/s 37(1) of the act.*

*15. The Ld. CIT(A) ought to have appreciated the fact that ACO erred in disallowing advisory fees of Rs.5,50,00,000/- without appreciating the fact that the assessee has maintained and submitted the relevant bills during the course of assessment proceedings.*

*16. The Ld. CIT(A) ought to have appreciated the fact that such advisory services are rendered for regular conduct of business making it an allowable expenditure.*

*17. Ld. CIT(A) ought to have appreciated the fact that the A.O has erred by disallowance of certain other items of such books of expenditure booked, when account are rejected u/s 145(3) of the Act, and the income is estimated @20% on gross receipts.*

*18. The appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.*

7. The learned Counsel for the assessee submitted that the assesment proceedings were taking place at Gurgaon and the AR of the assessee was from Hyderabad. He submitted that although full details could not be produced at the time of assessment, however, the estimation of profit at 20% of the turnover is absurd and misleading since it is not normal in the industry. He submitted that the assessee being a private limited company is maintaining regular books of account and proper bills and vouchers. He submitted that despite giving full details and

written submission before the learned CIT (A) NFAC, the learned CIT (A) NFAC without going through the details dismissed the appeal of the assessee by sustaining the various additions made by the Assessing Officer. He submitted that in the interest of justice the assessee should be given one last opportunity to substantiate its case before the Assessing Officer. He accordingly requested that the matter may be set aside to the file of the Assessing Officer with a direction to give an opportunity to substantiate its case.

8. The learned DR, on the other hand, strongly objected to the arguments advanced by the learned Counsel for the assessee. He drew the attention of the Bench to the findings given by the learned CIT (A) NFAC from page 38 to 45 of his order and submitted that the learned CIT (A) has given valid reasons while sustaining the various additions made by the Assessing Officer. Therefore, the matter need not be set aside to the file of the Assessing Officer and should be dismissed here itself.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case is a company engaged in the business of management consultants, supply of raw material, civil works and contract works in the nature of service sector and filed its return of income declaring loss of Rs.(-)56,91,166/-. The Assessing Officer completed the assessment u/s 144 of the I.T. Act determining the total income of the assessee at Rs.24,51,73,586/- wherein he made addition of Rs.25,08,64,752/- to the total income of the assessee under

various heads. It is the submission of the learned Counsel for the assessee that since the assessment proceedings were taking place at Gurgaon and the AR of the assessee was from Hyderabad and there was ongoing agitation for a separate Telangana State, the AR could not appear before the Assessing Officer on certain dates for which the assessment was completed u/s 144 of the I.T. Act. It is also his submission that the estimation of profit at 20% of the turnover by the Assessing Officer, which has been upheld by the learned CIT (A) NFAC, is extremely on the higher side especially when no such company in the service sector can earn that much profit. It is also his submission that when the assessee has not received any exempt income, the addition made u/s 14A r.w. rule 8D is not justified. Further, it is his submission that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding each and every expenditure that has been incurred by the assessee including the addition to fixed assets.

10. We find due to non-appearance of the assessee before the Assessing Officer despite number of opportunities granted by him, the Assessing Officer estimated the income from service sector in the order passed u/s 144 of the I.T. Act apart from making various other additions. We find, the Assessing Officer has simply mentioned that the average net profit in the service sector could be at 25% without giving any comparable case. Further, although the assessee had submitted before the learned CIT (A) NFAC that it has not earned any exempt income, still the disallowance u/s 14A has been sustained. We find although the assessee has filed detailed written submission before the learned CIT (A) NFAC, however, the learned CIT (A) NFAC has not considered the same properly. It is the submission of the learned

Counsel for the assessee that given an opportunity, the assessee is in a position to file all the requisite details before the Assessing Officer since the assessee is a company and has maintained regular books of account along with proper bills and vouchers etc. Therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to appear before him and file the requisite details substantiating the various expenses claimed in the P&L Account, evidence for addition to fixed assets, details of consultancy charges etc., The assessee is also directed to file all the requisite details with evidence to the satisfaction of the Assessing Officer. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the Assessing Officer without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The appeal filed by the assessee is allowed for statistical purposes.

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

**ITA 237/Hyd/2023 – A.Y 2014-15**

12. After hearing both the sides, we find the assessee filed its return of income for the impugned A.Y on 20.09.2014 admitting loss of Rs.9,82,66,611/-. The case was selected for scrutiny and the order was passed u/s 143(3) on 28.12.2016 determining the total loss at Rs.9,57,41,308/-. Subsequently, the case was reopened u/s 147 and notice u/s 148 dated 29.3.2019

was issued and served on the assessee. However, the assessee did not file the return of income in response to 148 notice within the due time. When notice u/s 142(1) was issued and served on the assessee calling for certain information in connection with the reopened assessment, the assessee filed a letter dated 20.08.2019 requesting the Assessing Officer to treat the return earlier filed as the return filed in response to notice u/s 148. The assessee also requested for supply of the reasons for reopening which were communicated to the assessee.

12.1 On being asked by the Assessing Officer to file the various details, the assessee filed scanty details. The Assessing Officer thereafter proceeded to complete the assessment on the basis of the material available on record. He noted that the assessee has debited an amount of Rs.6,92,80,363/- as finance cost which is on account of short-term borrowings of Rs.84,20,01,111/- as shown in the balance sheet. From the various details furnished by the assessee regarding the source of the availability of funds for advancing loans to its related parties, the assessee submitted that it has taken loan from M/s. National Energy Trading & Services Ltd amounting to Rs.62,75,00,000/- at an interest rate of 15.5% and utilized the same for offering loan to M/s. Lanco Infratech Ltd amounting to Rs.54,63,00,000/- at an interest rate of 16%. Hence the source of granting loan is out of interest bearing fund. It was further submitted that M/s. Lanco Infratech Ltd repaid the loan amount of Rs.57,32,00,000/- during the year under consideration and the company has invested an amount of Rs.89,71,00,000/- in M/s. Lanco Group Ltd. From the details furnished by the assessee, the Assessing Officer noted that the loans obtained by the assessee has not been utilised for the

purpose of business. Therefore, invoking the provisions of section 36(1)(iii) of the I.T. Act, the Assessing Officer made addition of Rs.3,60,40,023/-. The Assessing Officer similarly made addition of Rs.11,65,294/- being interest on late payment of TDS. Thus, the Assessing Officer completed the assessment at Rs(-)5,85,35,991/- as against the income assessed earlier u/s 143(3) at Rs.9,57,41,308/-.

13. In appeal, the learned CIT (A) NFAC dismissed the appeal filed by the assessee.

14. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

*"1. The order of the Ld. CIT(A), N.F.A.C, Delhi is erroneous both on facts and in law.*

*2. (a) The Ld. CIT(A) erred in rejecting ground nos. 2 to 8 taken before him.*

*(b) The Ld. CIT(A) erred in dismissing the appeal instead of annulling the impugned reassessment order dated 09-12-2019.*

*(c) The Ld. CIT(A) ought to have appreciated that the reassessment notice u/s 148 of the Act dated 29-09-2019 issued for the assessment year under consideration itself, is void and that therefore, the reassessment order u/s 143(3) r.w.s 147 of the Act dated 09-12-2019 is invalid abinitio.*

*(d) The Ld. CIT(A) erred in ignoring the fact that, prior to the impugned reassessment, a scrutiny assessment u/s 143(3) of the Act was made on 28-12-2016 in respect of which the assessee had submitted full information as called for by the Assessing officer and that there was no failure on the part of the assessee either in making the return of income u/s 139 of the Act or in disclosing fully and truly all material facts necessary for its assessment for the assessment year under consideration i.e A.Y 2014-15*

(e) The Ld. CIT(A) has erred in appreciating that the impugned reassessment is contrary to the first proviso to section 147 of the Act which is applicable for the assessment year 2014-15.

(f) The Ld. CIT(A) ought to have appreciated from the reasons for the reopening of the assessment as given in para No. 3.1 of the impugned assessment order, that there is a mere change of opinion in reopening the assessment and that therefore, the reassessment is contrary to Supreme court decision in the case of CIT.Vs.Kelvinator India Ltd,(2010) 187 TAXMAN 312 (S.C).

(g) The Ld. CIT(A) ought to have appreciated from para no 3.2 of the reassessment order that the proceedings u/s 147 of the Act are taken up in the appellant's case only to verify the disallowability of the claim made u/s 36(1 )(iii) of the Act which is not permissible as per the provisions of I.T Act,1961.

(h) The Ld. CIT(A) ought to have appreciated that the reassessment is invalid on the ground that there is no new tangible material in the Assessing officer's possession for issue of notice u/s 148 of the Act.

(i) The Ld. CIT(A) ought to have appreciated that the notice u/s 148 of the Act dated 29-03-2019 has been issued, there being no reasonable satisfaction or belief on the part of Assessing officer that income has escaped assessment for the year under consideration.

3. Without prejudice to ground nos. 2(a) to 20), the Ld. CIT(A) ought to have appreciated that since the reopening of the assessment has been made based on an "Audit objection" the impugned reassessment is invalid, abinitio.

4. (a) Without prejudice to other grounds the Ld. CIT(A) erred in dismissing ground nos. 9 to 14 taken before him.

(b) Without prejudice to other grounds, the Ld. CIT(A) erred in confirming the disallowance made u/s 36(1)(ii) of the Act for Rs. 3,60,40,023/-.

5 (a) Without prejudice to other grounds, the Ld. CIT(A) erred in dismissing ground nos. 15&16 taken before him.

(b) Without prejudice to other grounds, the Ld. CIT(A) erred in confirming the disallowance of interest for Rs. 11,65,294/-.

6. The appellant may, add or alter or amend or modify or substitute or delete and/ or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

15. The learned Counsel for the assessee referring to the assessment order submitted that although the assessment order has been passed u/s 143(3), however, the Assessing Officer has passed the order on the basis of material available on record and proper opportunity has not been granted to the assessee. He submitted that despite judicial decisions cited before the learned CIT (A) NFAC that no addition u/s 36(1)(iii) can be made and that no addition can be made on account of late payment of TDS, the learned CIT (A) NFAC without considering those decisions has summarily dismissed the grounds raised before him. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case before the Assessing Officer by filing the requisite details.

16. The learned DR, on the other hand, strongly objected to the arguments advanced by the learned Counsel for the assessee. The learned DR drew the attention of the Bench to the order of the learned CIT (A) NFAC which reads as under:

## Appellate Order:

I have considered the grounds of appeal, statement of facts, written submissions and Assessment Order dated

It is seen that the appellant had filed the return of Income for the year under consideration on 20.09.2014 with a loss of (-)Rs.9,57,41,308/-, subsequently the case of the appellant was selected for scrutiny and assessment was completed u/s.143(3) of I.T.Act on 28.12.2016 by reducing the loss to(-)Rs.9,57,41,308/-. Thereafter the case was re-opened u/s.147 after obtaining prior approval and accordingly, a notice u/s.148 dated 29.03.2019 was issued and duly served on the assessee on 09.08.2019. The assessment was completed u/s.143(3) r.w.s147 on 01.11.2019 by disallowing the interest on loan claimed by the appellant u/s.36(1)(iii) amounting to Rs.3,60,40,023/-. The addition was made as it was seen that the appellant had taken Loans from M/s.National Energy Trading & Services limited amounting to Rs.62,75,00,000/- at an interest rate of 15.5% and utilized the above loan for offering loan to M/s.Lanco Infratech Ltd, amounting to Rs.54,63,00,000/- at an interest rate of 16% and hence, the source of loans granted is out of interest bearing funds. However, this loan was repaid during the year under consideration amounting to Rs.57,32,00,000/- inclusive of interest. Further, it was also seen that the company had invested an amount of Rs.89,71,00,000/- in M/s. Lanco Group Ltd., during the year under consideration and the sources for the investment are out of the loan repayments made by M/s.Lanco Infratech Ltd.,and other receivables realized during the year.

However, as the loan taken was not utilized for the its own business purposes the interest paid after reducing the interest received from Land Infratech Ltd was disallowed as the loan was not utilized for the purpose it was taken i.e. its own business purposes.

**Ground No.1 & 18** :As these grounds are general grounds they do not need separate adjudication. Further, the appelllant has not added, alter or modify any other grounds these grounds are dismissed.

**Ground No.2.** The appellant has stated in this ground that since assessment u/s.143(3) was completed. The case should not have been re-opened u/s.147. This ground of the appellant cannot be accepted as the Assessing Officer had reason to belief that the income has escaped the assessment. And the case was re-opened after seeking approval from the higher authorities. Hence, this ground is **rejected**.

**Ground No.3** states that there was no failure on the part of the appellant to file the return of Income, as the company has filed the Return of Income, as the company has filed the Return of Income on 20.09.2014 by disclosing all the facts fully and truly facts and such materials was

available on record. This Ground is rejected as the appellant though filed the return of income but did not file it accurately, as the appellant had not utilized the loan amount taken towards its business needs. Instead gave loan to sister concern M/s.Lanco Infratech Ltd. on interest of 16 % and utilized the recovered amount and other amount, totalling to Rs.89,71,00,000/- as investment in the Lanco group Ltd and not for utilizing the business needs of M/s.Lanco enterprises Private Ltd, which is now added to its income after deducting the interest received from Lanco Infratech Ltd. Hence, this Ground is **rejected**.

**Ground No.4, 5, 6,7 and 8:** states that the Assessing Officer has erred in re-opening the assessment u/s.147 stating that all the documents were submitted which was called for u/s.142(1). However, this cannot be accepted as the Assessing Officer had reason to believe that the income has escaped assessment and the additions were made. The Assessing Officer was not satisfied by the submissions of the appellant and infact from the submissions of the appellant it was found that the loan amount taken was not utilized for the reason it was taken i.e. the business had been in loss in the case of the appellant and it had paid interest to the bank and the loan was not utilized for its own business purpose, and the amount was given as interest free investments in the **group (sister concern)**. Hence, these grounds are **rejected**.

In the **Grounds No. 9, 10, 11, 12, 13 and 14** the appellant has stated that the Assessing Officer had erred in making addition of Rs.3,60,40,023/- towards disallowance of interest u/s. 36(i)(iii) of the Act without appreciating the facts of the case. The appellant company had lent the amounts to its sister concern i.e. M/s.Lanco Infratech Ltd and made investment in its sister concern M/s. Lanco Group Ltd from the borrowed funds due to the business expediency. The AO ought to have appreciated the fact that assessee made investment in group company and that is benefited for the assessee company also and it is purely in nature of business and interest expenditure cannot be disallowed and interest expenditure cannot be disallowed in this regard. Further, it has been stated that the Assessing Officer ought to have appreciated the fact that he has not brought any cogent material on record to show that the assessee company has not utilised the proceeds of the said loan for business purpose. Furtner, the appellant has stated that the Assessing Officer has not brought any cogent material on record to show that the appellant had not utilised the proceeds of the said loan for business purpose and has claimed that the borrowed funds are allowable expenditure u/s.37(1) of the

Act, since the same were incurred wholly and exclusively for the purpose of the business of the appellant company. The appellant has stated that the interest expenditure incurred to make investment in group companies is allowed u/s.57(iii) of the Act.

The appellant grounds cannot be accepted as it has been stated in the Assessment Order that the appellant vide its letters filed on 04.01.2019 & 11.02.2019 stated that it has taken loan from M/s. National Energy Trading & Services Limited amount to 62,75,00,000/- at the rate of interest at 15.5%. However, this money has been utilized by giving loan to its sister concern i.e. M/s. Lanco Infratech Limited by charging an interest at the rate of 16% amounting to Rs.54,63,00,000/- This loan was re-paid back to the appellant amounting to Rs.57,32,00,000/-. Further, it has also been stated by the appellant to the Assessing Officer that company has invested an amount of Rs.89,71,00,000/- to M/s.Lanco Group Ltd during the year under consideration and sources for the investment are out of the loan repayments made by M/s.Lanco Infratech Ltd has repaid the loan amounting to Rs.57,32,00,000/-(inclusive of interest) during the year under consideration and the sources for the investment are out of the loan repayment made by M/s.Lanco Infratech Ltd., and other receivables realized during the year. As the appellant has given interest free loan to M/s.Lanco Group Ltd out of interest bearing funds received from the M/s. National Energy Trading & Services Limited. This is not correct as the appellant had received this amount for business purposes as the appellant income during the year under consideration is loss(-) amounting to Rs.9,57,41,308/-. The appellant could have earned profit by applying this amount in its own business to earn profit. Instead the appellant has given this as interest free loan to its sister concern as this is not in the interest of revenue as the appellant appears to have purposely not applied the funds in its own business so that it should be in loss to avoid tax. This amount is not covered u/s.57(iii) of the IT, Act as claimed by the appellant. Hence, I do not find any infirmity in the decision of the Assessing Officer, and hence, **the grounds No.9 to 14** of the appellant are **dismissed**.

**Ground No. 15 and 16** is regarding disallowance of interest on TDS of Rs.11,65,294/- . Further, it is seen that the appellant had claimed an interest expenditure of Rs.6,92,80,363/- this includes an amount of Rs.11,65,294/-towards interest on TDS late payment. This amount cannot be allowed as expenditure as it is penal in nature and not allowable

expenditure. Hence, **Ground No.15 and 16** of the appellant are **dismissed**.

**Ground No. 17.** This ground is regarding initiation of Penalty Proceedings and does not require any adjudication at this stage.

In view of the above discussion the appeal is **dismissed**.

17. He submitted that a perusal of the order of the learned CIT (A) NFAC shows that despite number of opportunities granted, the assessee did not produce the requisite details for which the Assessing Officer made the two additions on the basis of whatever details were furnished before the Assessing Officer. Further, the learned CIT (A) NFAC has passed a speaking order. Under these circumstances, the order of the learned CIT (A) NFAC be upheld and the grounds raised by the assessee should be dismissed.

18. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee before the learned CIT (A) NFAC has challenged the validity of the reopening of the assessment in absence of any tangible material. It was further argued that no new tangible material was obtained by the Assessing Officer except information already available on record and for that purpose the assessee had relied on various decisions. However, the learned CIT (A) in a summary manner has dismissed the grounds taken before him.

19. So far as the disallowance of interest u/s 36(1)(iii) is concerned, we find the assessee has made elaborate submissions before the learned CIT (A) NFAC by filing the detailed submissions

along with various case laws. However, the learned CIT (A) NFAC has not decided the issue of disallowance of interest u/s 36(1)(iii) in the light of those decisions. We find from the assessment order that despite number of opportunities granted by the Assessing Officer, the assessee has only responded 2 to 3 times and has filed scanty details based on which the Assessing Officer completed the assessment u/s 143(3). Since it is the submission of the learned Counsel for the assessee that money due from the subsidiaries on which the Assessing Officer charged notional interest at 15% per annum is towards the services rendered to them for which the bills have been raised and these are not advances to sister concern, therefore, no notional interest could have been charged. It is also his submission that the assessee fulfils all the conditions prescribed u/s 36(1)(iii) which are as under:

- \* The assessee should have borrowed capital
- \* The borrowing of the capital should be for the purpose of the business and
- \* Interest should have been paid on the borrowing.

Therefore, no disallowance could have been made.

20. So far as the interest on late payment of TDS is concerned, the learned Counsel for the assessee relied on a series of decisions to the proposition that the same is compensatory and not penal in nature. Since the assessee during the course of assesment proceedings has not furnished all the details as called for by the Assessing Officer and since the learned CIT (A) NFAC has not considered the various submissions made by the assessee including the various decisions of the Hon'ble High Courts and the Hon'ble Supreme Court, therefore, considering the

totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one more opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer on the scheduled date without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

**ITA No.238/Hyd/2023 – A.Y 2017-18**

22. After hearing both the sides, we find the assessee filed its return of income on 25.10.2017 admitting total loss of Rs.18,85,62,662/-. The return was selected for scrutiny and statutory notice u/s 143(2) dated 14.8.2018 was issued and served on the assessee. Subsequently notices u/s 142(1) on different dates were issued in E-proceedings. In response to the various notices, the assessee filed the requisite details.

22.1 During the course of assessment proceedings, the Assessing Officer noted that the assessee has claimed depreciation on goodwill at Rs.24,43,49,756/-. On being asked by the Assessing Officer to give a detailed note on the acquisition of goodwill along with the necessary documentary evidences to explain as to how the assessee company is eligible for depreciation

on goodwill, nothing was furnished by the assessee. In view of the above, the Assessing Officer made addition of Rs.24,43,49,756/- by disallowing the claim of depreciation on goodwill.

23. The Assessing Officer similarly disallowed an amount of Rs.21,596/- on account of late payment of PF & ESI and addition of Rs.32,871/- on account of difference of interest as reflected in the 26AS and that has been declared in the P&L Account.

24. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee.

25. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

26. So far as the disallowance of late payment of PF & ESI is concerned, the learned Counsel for the assessee fairly conceded the issue stands decided by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT vide civil appeal No.2833 of 2016 order dated 12th October 2022. Therefore, the grounds on this issue are dismissed.

27. So far as the other 2 issues are concerned, he submitted that depreciation on goodwill is an allowable deduction. However, the learned CIT (A) NFAC without considering the binding decision of the Hon'ble Supreme Court in the case of CIT vs. Smifs Security Ltd (348 ITR 302) (S.C) and other decisions cited before him has passed the order in a very summary manner dismissing the ground by observing as under:

**Ground No.6. & 7.** relates to the addition made of Rs.24,43,49,756/- by disallowing appellants claim of depreciation on Goodwill.

To verify the depreciation claimed by the appellant on the goodwill the assessee was asked by the Assessing Officer to give a detailed note on the acquisition of Goodwill along with necessary documentary evidences for the same and also explain as to how the assessee company is eligible for the claim of depreciation on Goodwill in relation to its business. However, the appellant could not furnish any information with regard to its claim of depreciation on Goodwill. However, the appellant in its submission has stated the following:

Lanco Group Limited is engaged in the business of supply of material for turnkey projects, Project management consultancy, holding investments in various companies including investments in companies engaged in infrastructure sector. The composite scheme of Arrangement vide High Court order Dt.08.07.2011 provides for the Amalgamation of Prince Stones Investments Limited(PSIL) with Lanco Group Limited(LGL) for consolidation of its investments in infrastructure companies in one company. Subsequent to the amalgamation of PSIL into LGL, this scheme provides for the demerger of the business of supplying materials for turnkey projects, providing services for project management consultancy and holding investments in the shares of companies engaged in sector other than infrastructure(Demerger Undertaking) into

Lanco Enterprise Private Limited (LEPL) .

ii) The Goodwill has arised at the time of Demerger of Company in the F.Y.:2011-12 and amount of Rs/1303198697/-. The Board of Directors has taken decision to amortise the Goodwill over a period of 5 years from the F.Y.:2015-16. Hence, the Goodwill Amortization is done in the current F.Y.:2016-17 an amount of Rs.26,06,39,739/-. The same is evident from financial statements.

iii) In this connection, it is to bring to your kind notice that, Goodwill on which depreciation claimed @25% was acquired as a result of above stated composite scheme of arrangement which is in accordance with the Income Tax Act, 1961. We are herewith enclosing the Joint Petition of High Court for the states of Punjab and Haryana at Chandigarh vide Paper Book.

However, as the claim of the appellant is huge it needs to be supported by any financial statements or Proofs. In the absence of the same **Ground No.6 & 7 are dismissed.**

28. The assessee also relied on the following decisions:

Sr. No	Name of the Case	Court	Citation
<b>Notice u/s 148 cannot be issued after 4 years only on basis of change of opinion is not valid</b>			
1	Kelvinator of India Limited	Supreme Court of India	320 ITR 561
2	Gayatri Sugars Ltd Vs ACIT	Hyderabad ITAT	ITA No:1728-31/H/2011
3	M/s. Kanha Enterprises Pvt Ltd vs ITOward 5(1)	Delhi ITAT	86/Del/2016
4	CIT V.s Multiplex Trading & Industrial Co. Ltd	High Court of Delhi	[2015] 378 ITR 351
5	Gulf Oil Corporation Vs ACIT	Hyderabad ITAT	ITA NO:999/H/2013
<b>Interest claimed on Borrowed capital was allowed u/s 36(i)(iii)</b>			
6	Vaman Prestressing Co. (P.) Ltd vs ACIT	HIGH COURT OF BOMBAY	[2023] 154 taxmann.com 325 (Bomba
7	S.A. Builders Ltd vs CIT	SUPREME COURT OF INDIA	[2007] 158 Taxman 74 (SC)
<b>Disallowance made on account of interest on Late payment of TDS</b>			
6	M/s. Trinity Infraventures Limited vs ACIT	Hyderabad ITAT	ITA No. 403/Hyd/2021
9	DCIT vs Mercury Projects Pvt. Ltd.	Hyderabad ITAT	ITA No. 440/Hyd/2018
10	Resolve Salvage & Fire India (P.) Ltd vs DCIT	ITAT Mumbai	[2022] 139 taxmann.com 196
11	M/s. Taksheel Solutions Limited Vs ACIT	Hyderabad ITAT	I.T.A. No. 1768/HYD/2012

29. He submitted that he has no objection if the issue is restored to the file of the Assessing Officer for fresh adjudication.

30. So far as the 2<sup>nd</sup> issue i.e. disallowance of interest to the tune of Rs.32,871/- is concerned, he submitted that the assessee is offering such interest on accrual basis and disallowance of the same would amount to double addition. The learned Counsel for the assessee accordingly submitted that he has no objection if these two issues are restored to the file of the Assessing Officer for fresh adjudication.

31. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A) NFAC.

32. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. So far as the first issue i.e. disallowance of depreciation on goodwill is concerned, we find the Assessing Officer disallowed the same since the assessee failed to file the requisite details before him. We find the learned CIT (A) NFAC also upheld the action of the Assessing Officer on the ground that the claim is huge which needs to be supported by any financial statement or proof. Since it is the submission of the learned Counsel for the assessee that given an opportunity, the assessee will file all the requisite details substantiating the same, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate its claim of depreciation on goodwill by filing the requisite financial statements and proof etc. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee.

32.1 So far as the disallowance of interest is concerned, it is the submission of the learned Counsel for the assessee that it is following accrual basis and disallowance of the same would amount to double addition. Under these circumstances we deem it proper to restore this issue also to the file of the Assessing Officer with a direction to grant one last opportunity to the assessee to substantiate that the assessee is in fact showing interest on accrual basis and the difference has already been offered to tax in the preceding year. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity

of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly partly allowed for statistical purposes.

33. In the result, ITA Nos. 236 & 237/Hyd/2023 are allowed for statistical purposes and ITA No.238/Hyd/2023 is partly allowed for statistical purposes.

Order pronounced in the Open Court on 28<sup>th</sup> December, 2023.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 28<sup>th</sup> December, 2023.

***Vinodan/sps***

Copy to:

S.No	Addresses
1	M/s.Lanco Enterprises (P) Ltd, C/o P Murali & Co.CA, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT, Circle 5(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*