

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.749/Bang/2023
Assessment year : 2018-19

M/s. KMB Estates LLP, Nirmal, 344, 2 nd Block, Bengaluru North, Bengaluru – 560 094. PAN : AAMFK 6771A	Vs.	The Principal Commissioner of Income Tax, Bangalore-1, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Prasanna N. Urala, Advocate
Respondent by	:	Shri G. Manoj Kumar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.02.2024
Date of Pronouncement	:	23.02.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order u/s. 263 of the Act dated 24.03.2023 of the Principal Commissioner of Income Tax, Bangalore-1 [Pr.CIT] for the AY 2018-19 on the following grounds:-

- “1) The order of the Hon'ble Prl. Commissioner of Income Tax, Bengaluru-1, is opposed to law and facts of the case.
- 2) The Hon'ble Prl. Commissioner of Income Tax, Bengaluru-1, without any material on record erred in holding that the assessment order for the subject assessment year is erroneous and prejudicial to the interest of revenue.

3) The Hon'ble Prl. Commissioner of Income Tax, Bengaluru-1, exceeded powers vested /s 263 of the Act.

4) The Hon'ble Prl. Commissioner of Income Tax, Bengaluru-1, ought to have appreciated that the issues which have reached finality cannot be reopened under the garb of erroneous and prejudicial to the interest of revenue.

5) The Appellant craves for leave to add to, delete from or amend the grounds of appeal.”

2. At the outset, we note that there is a delay of 135 days in filing the appeal. The assessee has stated that the impugned order escaped the attention of the Finance Manager of the company due to his preoccupation on pressing issues and his son was also hospitalized. Upon receipt of demand notice, the impugned order came to notice and appeal was filed. Therefore condonation of delay is requested.

3. After hearing both the parties, we note that that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of *Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471*, delay in filing the appeal before the Tribunal is condoned.

4. The brief facts of the case are that the assessee filed return of income on 30.09.2018 declaring total loss of Rs.1,17,34,205 and processed u/s. 143(1) on 18.3.2020. The case was selected for scrutiny and statutory notices issued to the assessee. The AO noted that in Form 3CD Sl.No.2(a) under the head “Expenditure incurred at club for entrance fee and subscription” expenditure of Rs.8,27,747 is in nature of personal expenditure and disallowed the same in the assessment.

5. The Id. Pr.CIT on examination of the records noticed the following issues were not inquired by the AO:-

“a) An amount of Rs. 10,03,716 was debited to P&L account towards prior period expenses which is not allowable. However, no such disallowance was made by the AO in the above referred order dated 15/03/2021.

b) An amount of Rs 1,25,134 was debited toward cost of club services. The same being personal expenditure and not incurred wholly and exclusive for the business purpose, is not allowable. However, no such disallowance was made by the AO in the above referred order dated 15/03/2021.

c) In the order u/s 143(1), CPC had reduced the returned loss from Rs 1,17,34,205 to Rs 1,07,81,324 on account of disallowance of Rs 9,52,881 u/s 37. However, while passing the order dated 15/03/2021, the AO adopted returned loss as per assessee's computation of income, instead of income/loss as per order u/s 143(1).”

6. The Id. Pr.CIT issues show cause notice to the assessee and assessee submitted reply. The Id. Pr.CIT noted that AO has not examined the above issue properly and the assessment order is erroneous and prejudicial to the interests of revenue. He accordingly directed the AO to pass a fresh order after duly carrying out necessary inquiry/verification. The assessee is in appeal before the ITAT.

7. The Id. AR submitted that with regard to issue of (b) & (c), this issue is already considered by the AO as well as by the CPC. He also referred to the tax audit report at Sl.No.21(a) that the assessee has incurred club expenditure has already been disallowed. He retreated the submission made before the Id. Pr. CIT place at paper book page No. 41-42. He further submitted that there are various judgments in

which it has been held that club expenses incurred by the assessee were for the purpose of business of the assessee.

8. The Id. DR submitted that the AO has not enquired on the issues as observed by the Id. Pr.CIT. The assessee has incurred club expenses which is clear from the tax audit report and no details were submitted. The AO has himself disallowed Rs.8,27,747 u/s. 37(1) of the Act to which the assessee has accepted and not appealed and for others of Rs. 1,25,134/- the AO did not enquire . Therefore the order of the AO is erroneous and prejudicial to the interests of the revenue.

9. Considering the rival submissions, we note that in regard to issue (b) and (c) as observed by the Id. Pr. CIT, while completing the assessment the AO has made addition u/s. 37(1) of the amount of Rs.8,27,747 as personal in nature as reported by the tax auditor. The assessee has paid entrance fees and subscriptions at clubs viz., Royal Bombay Yachth Club, Bombay Sailing Association, Royal Bombay Yachth club GSTAAD Hotels amounting to Rs.8,27,747. The assessee incurred expenditure at clubs for club services and facilities used amounting to Rs.1,25,134. We note that the CPC has reduced the returned loss from Rs.1,17,34,205 to Rs,1,07,81,324 on account of addition of Rs.9,52,881 u/s. 37. We note at sl.no. 21a of Form 3CD that the Tax Auditor has reported about the club expenditure incurred by the assessee of Rs.8,27,747 and of Rs.1,25,134. During the course of assessment the AO has disallowed to the extent of RS. 8,27,747/- treating the expenses as personal expenditure and the rest amount has

not been examined by the AO. During the course of hearing, in regard to issue (a) regarding prior period expenses of Rs.10,03,716, the Id. AR himself accepted that it is disallowed while filing return of income by the assessee. Therefore, considering the entire facts, we conclude that the order passed by the AO is erroneous and prejudicial to the interests of revenue and accordingly we uphold the order passed by the Id. Pr.CIT. We make it clear that double addition should not be made by the AO while passing the OGE since, while processing the return by the CPC the loss has been reduced by RS. 9,52,881/-. The AO is directed to verify the issue raised before us de-novo. The assessee is directed to file the necessary documents to avoid the double additions. Accordingly, we dismiss the grounds raised by the assessee.

10. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 23rd day of February, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd February, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.