

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "A" BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 910/Bang/2024 (Assessment Year: 2017-18)		
Plaza Agencies Pvt. Ltd. #41, Mantri House Vittal Mallya Road Bengaluru 560001 PAN – AACCP0589Q	vs.	DCIT, Circle - 5(1)(2) Bengaluru
(Appellant)		(Respondent)

Assessee by:	Smt. Sunaiana Bhatia, CA
Revenue by:	Ms. Neha Sahay, JCIT-DR

Date of hearing:	26.06.2024
Date of pronouncement:	27.06.2024

ORDER

Per: Prakash Chand Yadav, J.M.

Present assessee's appeal is arising from the order of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 08.04.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2017-18 having DIN & order No. ITBA/NFAC/S/2004-25/1063981275(1).

2. The brief facts of the case are that the assessee, a private limited company, filed its return of income (ROI) for the impugned year on 07.11.2017 declaring income house property at Rs.1,05,82,839/-, income from capital gain at Rs. 26,42,278/-, loss under the head income from other sources of Rs.7,68,79,249/- and business of Rs.97,23,869/-. The assessee set off the loss from other sources against the entire income from house property and capital gain to the extent of Rs. 1,32,25,117/- and thus declared Nil income. The case of the assessee was selected for limited scrutiny for the following reasons: -

- (a) Expenses incurred for earning exempt income

(b) Sales turnover/receipts

During the course of assessment proceedings the Assessing Officer (AO) made an addition of Rs. 4,87,22,105/- after invoking the provisions of s. 14A of the Act.

3. Aggrieved by the order of the AO the assessee preferred appeal before the Id. CIT (A) but remain unsuccessful.

4. Aggrieved by the order of the CIT(A) the assessee preferred appeal before us and raised 6 grounds of appeal. The Id. Counsel of the assessee also filed application for admission of additional ground and contended that the facts in respect of the additional ground are already on record and hence in the interest of justice this ground may kindly be admitted.

4.1 The assessee has raised additional ground, which is as under:-

“The Id.CIT(A) is not justified in holding that the depreciation of Rs.6,25,050/- claimed by the appellant has to be disallowed, while sustaining the disallowance to the extent of Rs.94,38,831/- u/s 14A of the Act under the facts and in the circumstances of the appellant’s case.

5. After considering the factual metrics and judgement of the Hon'ble Supreme Court in the case of *NTPC Ltd. Vs. CIT* reported in 229 ITR 383 and the judgement of the Hon'ble Karnataka High Court in the case of *Gundathur Thimmappa & Sons v. CIT* reported in 70 ITR 70 we admit the additional ground of appeal and proceed with the matter as under.

6. At the time of hearing the Id. Counsel of the assessee pressed ground Nos. 3 & 3.1 and craved that the AO ought to have allowed the set-off of loss with Income From Other sources (IOS). Ld Counsel argued that AO has exceeded his jurisdiction while framing the computation in as much as the case of the assessee, was selected for the purpose of limited scrutiny only. Hence in view of the guidelines of the CBDT the Id. AO could not have enlarged the scope of assessment. So far as the merits of the additions are concerned the Id. Counsel of the assessee argued that order of the AO is non speaking, as admitted by the CIT(A) also

7. With respect to the disallowance under Section 14A of the Act. The Id. Counsel of the assessee submitted that since the disallowance of 14A is beyond the jurisdiction of the AO, the Id. AO could not have touched this issue.

8. In respect of the additional ground the Id. Counsel of the assessee has raised two arguments: (a) the Id. CIT(A) has enhanced the disallowances without

any show cause notice; and (b) the depreciation allowance is not at all covered by the provisions of s. 14A of the Act.

9. The learned D.R. argued that: (a) the AO has not travelled beyond the scope of enquiry applicable in limited scrutiny case; (b) the Id. CIT(A) has issued show cause notice before disallowing the depreciation; and (c) since the assessee has not used the assets during the year under consideration the assessee is not entitled for depreciation.

10. After considering the rival contentions we are of the view that it is settled position of law that the expenses attributable to the income taxable under the head income from other sources are allowable expenses. Further, depreciation is a statutory allowance and hence cannot be disallowed by invoking the provisions of s. 14A of the Act. Our view finds support from the provisions of Explanation 5(a) to s. 32 of the Act which provides that depreciation is inevitable irrespective of the claim of the assessee. In view of the above we restore the matter to the file of the AO to allow the expenses attributable to Income taxable under the head of IOS as well as to allow the depreciation to the assessee in accordance with law.

11. Since we have already decided the issue on merits we are not making any comments on the scope of enquiry in limited scrutiny cases.

12. In the result, the appeal filed by the assessee is allowed in substance and set aside to the file of AO for limited purpose of quantification of the amount of expenses and depreciation

13. In result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27th June, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bengaluru, Dated: 27th June, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bangalore*