

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

**Before Shri Manjunatha G., Accountant Member**  
**and**  
**Shri K. Narasimha Chary, Judicial Member**

आ.अपी.सं / **ITA No.1023/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Indur Developers and Agencies Private Limited Hyderabad [PAN : AABCI4254Q]	Vs.	DCIT, Circle-1 Nizamabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri S.Rama Rao, AR (through Virtual Mode) Ms.S.Sandhya, AR	
राजस्व द्वारा / Revenue by::	Shri Srinath Sadanala, DR	
सुनवाई की तारीख / Date of hearing:	09/12/2024	
घोषणा की तारीख / Date of Pronouncement:	09/12/2024	

आदेश / ORDER

**PER. MANJUNATHA G., A.M:**

This appeal filed by the assessee is directed against the order dated 14/02/2024 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi, relating to A.Y.2017-18 on the following grounds :

1. The order of the learned CIT(A) is erroneous both on facts and in law;

2. The learned CIT(A) erred in deciding the appeal without providing further opportunity to the appellant.

3. The learned CIT(A) ought to have considered the facts on merit and directed the Assessing Officer to delete the addition of Rs.64,19,513/- made by him towards disallowance of layout development expenses;

4. The learned CIT(A) ought to have seen that the expenditure of Rs.64,19,513/- relate to the business activity of the appellant and that the amount is an allowable deduction;

5. Any other ground / grounds that may be urged at the time of hearing.

2. At the outset, we find that there is a delay of 177 days in filing the appeal by the assessee before the Tribunal. The appellant has filed a petition for condonation of delay and also explained the reasons for the delay in filing the appeal. The learned Counsel for the assessee, referring to petition filed by the appellant, submitted that the appellant had given e-mail ID of office assistant who is looking after income tax matters. Further, while the proceedings are in progress, the office assistant abruptly discontinued attending the office from the first week of November, 2023. The income tax credentials in the portal were created by the said person and was not known to others. In his absence, the petitioner company was not aware of the order passed and served by the Ld.CIT(A). However, after the appellant got orders from the Tribunal for the A.Y.2016-17, it has verified the pending issues pertaining to earlier years and noticed that no appeal has been filed in respect of order passed by the Ld.CIT(A) for the A.Y.2017-18. Therefore, immediately taken steps to file the appeal, which caused delay of 177 days.

However, the said delay is neither intentional nor wanton of any undue benefit, but purely beyond the control of the assessee. Therefore, requested to condone the delay in filing the appeal.

3. The Ld.DR on the other hand, opposing the petition filed by the assessee, submitted that the reasons given by the appellant do not come under reasonable cause for condonation of delay. Further, the appellant has given vague reasons and put blame on a person who is not present for verification, therefore, the appeal filed by the assessee with the delay of 177 days should not be admitted and needs to be dismissed.

4. We have heard both the parties and considered relevant reasons given by the appellant for the delay in filing the appeal before the Tribunal. After hearing both the sides, we find that the reasons given by the appellant for not filing the appeal on or before the due date prescribed under law, comes under reasonable cause as provided under the Act. Thus, we condone the delay in filing the appeal and admit the appeal for adjudication.

5. The brief facts of the case are that the appellant is a private limited company, engaged in the business of construction and sale of residential and commercial flats. The assessee has filed its return of income for the assessment year 2017-18 on 30.10.2017, declaring total income of Rs.59,95,676/-. The case has been subsequently reopened u/s 147 of the Income tax Act, 1961 ("the Act") and the assessment was completed under section 144 r.w.s.147 of the Act on 30.03.2022, determining the total income at

Rs.1,24,15,193/-, by making addition towards disallowance of finance cost debited under the head, lay out development expenditure at Rs.64,19,513/- u/s 37 of the Act.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee neither appeared nor filed any details, even though the case was posted for hearing on four occasions. Therefore, the Ld.CIT(A) dismissed the appeal filed by the assessee ex-parte for non-prosecution, by following the decision of Hon'ble Supreme Court in the case of CIT Vs. B.N.Bhattacharjee and Another, 118 ITR 461 (SC).

7. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal.

8. The learned Counsel for the assessee, Shri S.Rama Rao submitted that the Ld.CIT(A) is erred in sustaining the addition made by the Assessing Officer towards disallowance of finance charges under the head layout development expenditure on altogether a different ground, even though, the Assessing Officer disallowed interest on the ground that the appellant has not established utilization of advances from customers for the purpose of business of the assessee. The learned Counsel for the assessee further submitted that the assessee is into the business of real estate development, collects advances from customers for sale of residential flats and commercial space. The customers pay 80% of consideration in advance in terms of MOU. The MOU provides for payment of interest @10% to 14% in case of delay in delivery of flats. As per the agreement

between customers, the appellant has paid interest on customers' advance and the same has been debited under the head 'finance charges'. The Ld.CIT(A) without appreciating the relevant facts, dismissed the appeal filed by the appellant ex-parte for non-prosecution and hence, the order should be set aside.

9. The Ld.DR, Shri Srinath Sadanala, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee has received advance from customers and also diverted funds to various group companies in the form of share capital and loans and advances. The assessee has not filed any evidence to prove utilization of advances received from the customers for the purpose of business of the assessee. Therefore, the Assessing Officer has rightly disallowed the layout development expenses and therefore, the order should be upheld.

10. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. We find that this issue is squarely covered in favour of the assessee by the decision of the coordinate Bench of ITAT, Hyderabad for the A.Y.2016-17 in ITA No.672/Hyd/2020 dated 04.09.2024, where under identical set of facts, the Tribunal deleted the additions made by the Assessing Officer towards finance charges. The relevant findings of the Tribunal are as under :

*“34. We have heard the rival submissions and perused the material on record and gone through the orders of the authorities below. The fact borne out from the record indicates that the assessee being in the business of real*

*estate development, has collected advances from customers for sale of flats / commercial complexes in terms of MOU. As per the terms of MOU between the appellant and the customers, there is a provision for payment of interest ranging from 10% to 14% in case of any delay in delivery of flats to the customers. As per the contractual agreement with the customers in terms of MOU, the assessee has paid interest on customers' advances and debited under the head finance charges. The AO has disallowed interest expenses on the ground that the appellant failed to prove utilization of advances received from customers for the purpose of business. The ld. CIT(A) went on a different footing and computed disallowance of interest for diversion of interest-bearing funds for non-business purpose. We find that the basic business of the assessee is real estate development, and in that process, the assessee collected advances from customers for sale of flats. As per the agreement with the customers, the assessee has paid interest in case of delay in delivery of flats. The assessee had also proved that the funds received from the customers in the form of advances have been utilized for the purpose of business of the assessee. In fact, it is not a case of the AO that the assessee had diverted funds for non business purposes. Assuming for a moment that loans and advances given to group concerns are diversion of interest-bearing funds, the fact remains that, as the AO himself noted, the group companies of the assessee are also engaged in the business of real estate development and there is a business nexus between the appellant and the group concerns and thus, in our considered opinion, loans and advances given to other group companies can be said to be in the normal course of the business of the assessee and thus, there is a commercial expediency. Therefore, we are of the considered view that the AO erred in disallowing finance charges being interest paid on customers' advances without any valid reasons. The ld. CIT(A), without appreciating the relevant facts, partly confirmed the addition made by the Assessing Officer. Thus, we set aside the order of the ld. CIT(A) and direct the AO to delete the addition sustained by the ld.CIT(A) towards disallowance of finance charges amounting to Rs.25,15,910/-, which was confirmed by the ld.CIT(A).”*

11. In view of this matter and by respectfully following the decision of coordinate Bench in appellant's own case for the A.Y.2016-17, we direct the Assessing Officer to delete the additions made towards disallowance of finance charges of Rs.64,19,513/-.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 9<sup>th</sup> December, 2024.

Sd/- <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 9<sup>th</sup> December, 2024

**L.Rama, SPS**

Copy to:

S.No	Addresses
1	M/s Indur Developers and Agencies Private Limited, 14 <sup>th</sup> Floor, Kapil Towers, Nanakramguda, Hyderabad
2	The Deputy Commissioner of Income Tax, Circle-1, Nizamabad
3	The Pr. CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

*By Order*