

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE****BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.976/Bang/2019
Assessment Year: 2013-14

Canara Housing Development Company 10/1, Lakshminarayana Complex Palace Road Bangalore 560 052.  <b>PAN NO :AACFC2037M</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle 2(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Ramakrishnan, A.R.
<b>Respondent by</b>	:	Shri Sumer Singh Meena, D.R.

<b>Date of Hearing</b>	:	28.04.2022
<b>Date of Pronouncement</b>	:	28.04.2022

**O R D E R****PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 22.3.2019 passed by Ld. CIT(A)-11, Bengaluru and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the disallowance of write off of property advances amounting to Rs.7.86 crores.

2. The facts relating to the issue are stated in brief. The assessee is engaged in the business of real estate development. The A.O. noticed that the assessee has written off Rs.9,81,13,042/- as

bad debts. The assessee submitted that the amount so written off represents 'property advances' made to various parties during the normal course of business, which became irrecoverable. The A.O. noticed that the assessee has not entered into any MOU/Agreement with the parties to whom advances have been paid. In the absence of the same, the A.O. held that the assessee could not establish beyond doubt that the advances made are indeed land advances and not any other payment. Accordingly, the AO took the view that the claim of write off of large advances exceeding Rs.50.00 lakhs should be disallowed. Accordingly the AO disallowed large advances aggregating to Rs.7,86,78,212/-, the details of which are given below:-

<b>Sl.No.</b>	<b>Name of the parties</b>	<b>Amount (Rs.)</b>
1	<i>Kirloskar Investment &amp; Finance Ltd.</i>	<i>2,36,72,543/-</i>
2.	<i>Latha D Pai</i>	<i>1,09,28,169/-</i>
3.	<i>Manoranjana P</i>	<i>98,50,000/-</i>
4.	<i>Bilekalli Property</i>	<i>67,18,700/-</i>
5.	<i>One Source Integrated Design Build Services Pvt. Ltd.</i>	<i>1,65,00,000/-</i>
6.	<i>Niligiri Estates</i>	<i>1,10,08,800/-</i>
	<b>Total</b>	<b>7,86,78,212/-</b>

However, the A.O. allowed a sum of Rs.1,94,34,380/-, as it represented smaller advances of less than Rs.50.00 lakhs on the reasoning that these kind of write off is incidental to the business.

3. Before Ld. CIT(A), the assessee placed its reliance on the decision rendered by Hon'ble Supreme Court in the case of TRF Limited Vs. CIT 323 ITR 397 and contended that the amount written off as bad should be allowed as deduction. However, the Ld. CIT(A) took the view that writing off of bad debt is not an empty formality and assessee cannot convert any live amount to bad debt only on the basis of technical rule of write off. The Ld. CIT(A) further observed that the assessee has not produced any evidence to prove that the debtors were not in financially sound position to

repay the said debts. Accordingly, the Ld. CIT(A) confirmed the addition made by the A.O. Aggrieved, the assessee has filed this appeal before us.

4. The Ld. A.R. submitted that the assessee is engaged in the real estate development business and hence, as part of its business activities, it used to give advances for purchase of lands for the purpose of real estate development. The Ld. A.R. submitted that the assessee has written off these advances, when it came to the conclusion that they are not recoverable. The Ld. A.R. submitted that the assessee has written off Rs.9.81 crores during the year under consideration as bad debts. The A.O. has, however, allowed the claim to the extent of Rs.1.94 crores and disallowed the balance amount of Rs.7.87 crores only for the reason that they are larger amounts. While allowing the claim of Rs.1.94 crores, the AO himself has observed that such kind of expenses are incidental to the business of the assessee. Having held so, the A.O should not have taken identically opposite stand in respect of large advances. Accordingly, the Ld A.R submitted that the AO was not justified in disallowing the claim of the assessee only for the reason that the amount written off was larger amounts.

5. The Ld. A.R. further submitted that the assessee has written off a sum of Rs.13 lakhs and another sum of Rs.1.65 crores paid to a company named M/s. One Source Integrated Design Build Services Pvt. Ltd. The A.O. has allowed Rs.13 lakhs but disallowed Rs.1.65 crores. If the A.O. is accepting that the amount of Rs.13.00 lakhs was not recovered from that company, there is no reason to hold that the other amount of Rs1.65 crores could be recovered by the assessee. Accordingly, he submitted that the reasons given by A.O for making the disallowance is not legally justified. The Ld. A.R. further submitted that the AO has rightly observed, while

allowing claim of Rs.1.94 crores that the loss of advance given for purchasing property is quite incidental in the business of real estate development. Accordingly he contended that the quantum of write off of the advance should not be a criteria for disallowing the claim. He further submitted that the amount written off as per the decision rendered by Hon'ble Supreme Court in the case of TRF Limited (supra).

6. The Ld A.R further submitted that the Ld CIT(A) has confirmed the disallowance on the reasoning that the assessee has not shown any proof to substantiate that the amount became irrecoverable. He submitted that the reasoning given by the AO while allowing claim of Rs.1.94 crores equally applies to other advances written off by the assessee.

7. The Ld. D.R., on the contrary, supported the order passed by Ld CIT(A).

8. We heard the rival contentions and perused the record. We notice that the A.O. has disallowed part of claim of the assessee only for the reason that the quantum of advance given is on higher side, while the A.O. has himself allowed the claim in respect of smaller advances observing that they are incidental in the business of real estate development. From the assessment order, we notice that the A.O. has fixed a limit of Rs.50 lakhs for this purpose and accordingly, disallowed advances exceeding Rs.50 lakhs. Admittedly, that cannot be a criterion for making disallowance of the claim made by the assessee. Further the AO has allowed claim in respect of a party, but disallowed similar claim made in respect of very same person only for the reason that the said advance is on higher side. This stand of the AO is also not acceptable.

9. We notice that the Ld. CIT(A) has expressed the view that the assessee has not proved before the A.O. that the attempts made by it for recovery of the amount has failed and further the debtors were not financially sound to repay the debt. We notice that the assessee has canvassed its claim as bad debts u/s 36(1)(vii) of the Act and hence it has placed its reliance on the decision rendered by Hon'ble Supreme Court in the case of TRF Limited (supra). The Ld CIT(A) also appears to have proceeded on that line only by observing that writing off of bad debt is not an empty formality and assessee cannot convert any live amount to bad debt only on the basis of technical rule of write off.

10. However, in our view, the advances given for purchase of land in the normal course of business of carrying on real estate development, if not recoverable could be allowed as either trading loss u/s 28 of the Act or as expenditure u/s 37 of the Act. In fact, the AO has accepted the loss to the extent of Rs.1.94 crores specifically observing that these kinds of payments/write off are incidental to the business, meaning thereby, the AO has actually applied the provisions of sec.28/37 of the Act. Before us, the Ld. A.R. has furnished a written submission explaining the reasons, which compelled the assessee to write off these amounts. We noticed that the Ld CIT(A) has proceeded to examine the claim as bad debts u/s 36(1)(vii) of the Act and the AO has disallowed the claim only for the reason that the amount written off are larger advances. In our view, the criteria applied by the AO for allowing the claim to the extent of Rs.1.94 crores should be applied to other advances also.

11. In view of the foregoing discussions, we are of the view that the claim of the assessee is required to be examined either u/s 28 or u/s 37 of the Act. Accordingly, we are of the view that this issue

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requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by the Ld. CIT(A) on this issue and restore the same to the file of the A.O. with the direction to examine the claim of the assessee u/s 28 / 37 of the Act. The assessee should be given adequate opportunity of being heard.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> Apr, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 28<sup>th</sup> Apr, 2022.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**