

Date : 05-12-2019.

From

Alpine Estates,
5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad – 500 003.

To

Asst. Commissioner of Income tax,
Circle 10(1)/ Hyd.,
IT Towers, A.C. Guards,
Hyderabad.

Sir,

Sub: IT Re-assessment proceedings – Own case – PAN AANFA5250F .
Assessment Year 2014-15 – submission of information – Reg.
Ref: Your Notice u/s.142(1) dated 21-11-2019.

In connection with the re-assessment proceedings for Assessment Year 2014-15, certain information requested for is submitted herewith for your kind consideration.

1. Expenditure claim for PF (Contractors) of R.30,78,362/-

The payment of Rs.30,78,362/- towards Provident Fund contractors is debited to Construction account and is grouped as Other Expenses under the head 'Construction expenses'.

Out of the total payment of Rs.30,78,362/-, Rs.30,65,814/- is paid under an Order dated 23-12-2013 passed by Asst. Provident Fund Commissioner u/s.14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Copy of the Order is enclosed for a quick reference **Annexure – 1**. The break-up of the total amount of Rs.30,65,814/- is as under:

Damages u/s.14B	Rs.20,41,743.00
Interest u/s.7Q	Rs.10,20,071.00
Total	Rs.30,65,814/-

In the Computation of income, damages of Rs.20,41,743/- u/s.14B has been disallowed u/s.37.

The interest paid u/s.7Q is not penal in nature, but it is compensatory in nature and, therefore it is allowable u/s.37(i) of IT Act.

We place our reliance on following judicial pronouncements:

- CIT vs Mysore Electrical Industries Ltd. (1992) 196 ITR 885 (Kar) – Copy enclosed **Annexure -2**.
- Amforge Industries Ltd. vs DCIT Cir 3(1)/Mumbai by ITAT, Mumbai Bench 'A'. (ITA No.3666/Mum/2014). Copy enclosed **Annexure -3**.



In view of the above case laws it is submitted that no further disallowance of Rs.10,36,619/- as proposed in the Notice is required.

It may be noted that the total payment of Rs.30,78,362, includes Rs.12,548/- paid as regular PF and is allowable deduction (Rs.30,78,362/-) Rs.30,65,814/-.

2. Payments for 'Labour charges', 'Allowance for Equipment' and 'Allowance for Consumables'.

From the Ledger account extract submitted earlier you have taken a view that 'most of the amount paid to the parties are same and for the same kind of work' and proposed to disallow the entire expenditure claim.

The payments are made to a contractor say for example Rs.1000/- for 'X' type of work to done. For our understanding and internal purposes such R.1000/- is apportioned towards 'Labour charges', 'allowance for Equipment' and 'allowance for consumables'. The total amount of Rs.1000/- (example) is apportioned and is debited to 3 ledgers Account head. The contractors bill and supporting will be for the entire amount of Rs.1000/- (example). For you reference few such bills copies are attached herewith **Annexure – 4**.

It is therefore submitted that the entire expenditure which got apportioned and got debited to 3 different ledgers account are allowable expenditure.

3. Modular Kitchen expenses:

The total expenditure on Modular Kitchen is Rs.4,10,366/- In the ledger extract submitted earlier there are certain bills which the parties have raised in earlier years but has been considered as expenditure for the fy 13-14. Actually, the bills of suppliers are accounted only when the same are approved upon satisfactory completion of the works. There may be instances where the supplier raises bills for materials but the modular kitchen is not finally fitted and approved by us/customers. For this reason there can be a timing difference between the date of Invoice of the supplier and its accounting upon the approval. It is therefore submitted that the accounting as expenditure for Modular Kitchen and applicable TDS thereon has been correctly done. It is therefore requested that no disallowance as proposed is to be made.

4. The ledger accounts for 'Job work charges' and 'Other Sundry expenses' are enclosed herewith as **Annexure – 5 & 6 respectively.**

5. Payment to Praful Sanitary and note on nature of expenses

The items purchased are for final sanitary and other bathroom fixtures. As submitted earlier generally these work are done only at the time of final handover and possession to the buyers. It is a precautionary requirement to do such fittings at the end otherwise the works/labourers and other may spoil and damage it before it is handed over the buyer. This is a general trade practice in the real estate housing projects. The similar work such as Tile fittings / paints / electrical fittings (External plates, switches/regulators etc.) are undertaken as finishing works at the time handing over the flat / apartment to the buyers. Further, such works may be carried over after receipt of Occupancy Certificate. There can be a situation where the flat is not booked / sold and it will be unwise and not prudent to do the final fittings and finishing. In the event if it takes say 2 to 3 years to sell a particular flat which is finished with all fittings, it will lose its newness / freshness and the customer may ask for replacing the same. These are



practical aspects which is followed all over in real estate business including in commercial properties. Generally, in commercial properties only the shell is made and the final finish is as per the requirement of the customer.

The Ledger account copy with supporting bills are enclosed **Annexure – 7.**

6. Payments to 'Linus Consultants Pvt. Ltd.

The ledger account copy with supporting bills of are enclosed **Annexure -8.**

7. Payments to 'Praful Sanitary', TBK Kdokia Tiles & Bath Kitchen Pvt. Ltd.', 'Elite Spaces' and 'H & R Johnson India Ltd.'

The ledger account copy with supporting bills of are enclosed **Annexure -9, 10 & 11.**

Keeping in view the above facts & prevalent trade practice it is submitted that claim of deduction u/s.80IB (10) is allowable though some expenditure is incurred towards final fittings and finishing after the receipt of Occupancy Certificate. The substance of the expenditure incurred before Occupancy Certificate and after Occupancy Certificate has to be looked upon and not ignored.

Provisions of Section 80-IB (10) are apparently aimed at giving encouragement to provide affordable housing units and therefore the provisions are in the nature of Incentive Provisions.

The provisions for deductions and exemptions should be construed reasonably. (*CIT V. Gwalior Rayon Silk Manufacturing Co. Ltd (1992) 196 ITR 149 (SC)*) – Copy enclosed **Annexure – 12.**

Provisions contained for growth and development in the taxing statute should be interpreted liberally and such provisions should be construed so as to advance the objective of such provisions and not to frustrate them. (*Balaji Tempo Ltd v. CIT (1992 196 ITR 188 (SC))*) – Copy enclosed – **Annexure -13.**

The construction which reduces the statute to futility has to be avoided. (*CIT v. Hindustan Buil Carriers (2003) 259 ITR 449 (SC)*) – Copy enclosed **Annexure – 14.**

We hope you will find the above information in order.

Yours faithfully,

For ALPINE ESTATES,

PARTNER