IN THE INCOME TAX APPELLATE TRIBUNAL
"C"BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENTAND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.1258/Bang/2018
Assessment Year: 2009-10

M/s. Lepakshi Knowledge Hub Pvt. Ltd. No.26/1, 1&2nd Floor IBIS Hotel, Hosur Road Bengaluru 560 008 **PAN NO :AABCL4609G**	**Vs.**	ACIT Circle-4(1)(1) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Adarsh K.G., A.R.
Respondent by	**:**	Shri Pradeep Kumar, D.R.

Date of Hearing	**:**	08.03.2021
Date of Pronouncement	**:**	08.03.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 14.12.2017 passed by Ld. CIT(A)-4 and it relates to the assessment year 2009-10.

2. The grounds of appeal urged by the assessee give rise to the following two grounds:-

a) Validity of re-opening of assessment
b) Disallowance of expenses of Rs.87.98 lakhs.

3. The assessee is engaged in the business of establishing integrated knowledge hubs at educational institutions. The original assessment in the hands of the assessee was completed u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] on 7.12.2011. In its return of income, the assessee had declared loss of Rs.78.86 lakhs, after claiming expenses of Rs.87.98 lakhs. The A.O., in the original assessment proceedings, took the view that business of the assessee has not been commenced. Accordingly, he held that the entire expenses of Rs.87.98 lakhs claimed by the assessee should be capitalized as they have been incurred at pre-commencement stage of the business. Accordingly, the A.O. disallowed the expenditure claimed amounting to Rs.87.98 lakhs and determined the total income of the assessee at Rs.6.78 lakhs.

4. Subsequently, the A.O. re-opened the assessment by issuing notice u/s 148 of the Act. In the re-opened assessment, the A.O. started computing the total income by adopting the total income figure of Rs.6.78 lakhs, that was determined in the original assessment proceedings. In the re-assessment proceedings also, the A.O. disallowed the expenditure of Rs.87.98 lakhs holding the same as non-genuine and accordingly, computed the total income at Rs.94.76 lakhs.

5. Before Ld. CIT(A), the assessee submitted that the addition of Rs.87.98 lakhs made by the A.O. in the re-assessment proceedings has resulted in double taxation of the same amount. The Ld. CIT(A) in principle upheld the view of the A.O. that the expenditure claimed by the assessee is not non-genuine. However, he directed the A.O. to take appropriate rectification action while computing the total income, arising out of both assessment orders. Still aggrieved, the assessee has filed this appeal before us.

6. We have heard the rival submissions and perused the materials available on record. We notice that the A.O. had disallowed the expenditure claim of Rs.87.98 lakhs in the original assessment proceedings holding the same as pre-commencement expenses. In the re-assessment proceedings, the A.O. has made the disallowance of very same amount of Rs.87.98 lakhs holding it as non-genuine. While computing total income in re-assessment proceedings, the AO started with the total income determined in the original assessment proceedings, in which, the amount of Rs.87.98 lakhs had already been disallowed. We may recall that the assessee had returned loss of Rs.78.86 lakhs and after disallowance of Rs.87.98 lakhs, the assessed income was determined at Rs.6.98 lakhs in the original assessment proceedings. In the re-assessment proceedings, the A.O. has proceeded to compute the total income by adopting the above said figure of Rs.6.78 lakhs and again made the addition of Rs.87.98 lakhs and accordingly, computed the total income at Rs.94.76 lakhs.

7. A perusal of above said facts would show that the amount of Rs.87.98 lakhs has been added twice by the A.O. i.e. once in the original assessment order and again in the re-assessment order. Hence, there is merit in the contention of the assessee that there is double taxation of the same amount, which is not permissible under the law. Accordingly, we direct the A.O. to delete the disallowance of Rs.87.98 lakhs made in the re-assessment order. Accordingly, the order of the Ld. CIT(A) would stand modified.

8. Since we have granted relief to the assessee on merits, we do not find it necessary to adjudicate the legal issues urged on validity of re-opening of assessment, as the same would be academic in nature.

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

Order pronounced in the open court on 8th Mar, 2021.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 8th Mar, 2021.
VG/SPS

<u>Copy to:</u>

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.