

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 1062/JP/2016
निर्धारण वर्ष / Assessment Year : 2013-14.

Asstt. Commissioner of Income Tax, Circle-6, Jaipur.	बनाम Vs.	M/s. Rajasthan State Beverages Corporation Ltd., D-Block, First Floor, Vitt. Bhawan, Janpath, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCR 9522 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri D.S. Kothari (CIT)
निर्धारित की ओर से / Assessee by: Shri Ajay Jain (CA)

सुनवाई की तारीख / Date of Hearing : 10.03.2017.
घोषणा की तारीख / Date of Pronouncement : 20/03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the revenue is directed against the order of Id. CIT (A)-2, Jaipur dated 15.09.2016 pertaining to assessment year 2013-14. The revenue has raised the following grounds of appeal :-

- "1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT (Appeals) was justified in deleting the addition of Rs. 19,00,00,000/- made by the AO by disallowing the payment of privilege fees without appreciating the fact that the said expenses are of capital in nature.
- 2(a) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs. 8884/- made for depositing the employee's contribution to PF & ESI beyond the prescribed time limit provided in the respective Acts.

- (b) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the employee's contribution to PF & ESI are governed by the provisions of section 43B and not by section 36(1)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961.
3. the appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 20.02.2016. While framing the assessment, the AO observed that a perusal of the Profit and Loss Account of the assessee Corporation shows that the assessee Corporation has paid a sum of Rs. 19,00,00,000/- to the Government of Rajasthan as privilege fee. The basic issue involved in the case is regarding the allowability of payment of privilege fee by the assessee Corporation to the State Government of Rajasthan amounting to Rs. 19,00,00,000/- which has been claimed by the assessee Corporation as business expenditure. The AO did not accept the explanation of the assessee and made disallowance of Rs. 19,00,00,000/- and added the same to the total income of the assessee. Further, the AO also made addition of Rs. 8,884/- on account of late deposit of PF & ESI contribution. The AO also made disallowance of depreciation on Data Centre and Software installation of Rs. 19,85,349/-. Aggrieved by this, assessee preferred an appeal before Id. CIT (A), who after considering the submissions, partly allowed the appeal thereby the Id. CIT (A) following the judgment of Hon'ble Rajasthan High Court in the assessee's own case deleted the disallowance in respect of Privilege fee and also deleted the disallowance made on account of late deposit of PF & ESI contribution by following the judgments of

Hon'ble Jurisdictional High Court in the case of Jaipur Vidhyut Vithran Nigam Ltd., 265 CTR 62 (Raj.), CIT vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131 (Raj.) and also the decision of ITAT in the assessee's own case. Aggrieved by this, the revenue has preferred the present appeal before this Tribunal.

3. The Id. D/R fairly conceded that both the issues are against the revenue by the judgments of Hon'ble Rajasthan High Court.

3.1. On the contrary, the Id. A/R has supported the order of Id. CIT (A) and submitted that the issue is squarely covered by the judgments of Hon'ble Jurisdictional High Court in favour of the assessee.

3.2. We have heard rival contentions and perused the material available on record. We find that the identical issue was also agitated by the revenue in the assessee's own case in ITA No. 1000/JP/2015 wherein the Coordinate Bench by following the judgment of Hon'ble Rajasthan High Court deleted the disallowance by observing in para 4.3 as under :-

"4.3. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) has decided this issue in para 2.4. of her order which reads as under :-

"2.4. I have perused the facts of the case, assessment order and the submissions of the appellant. This issue has also arisen in the case of the appellant in A.Y. 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. This issue is covered in favour of the appellant by the orders of the ITAT Jaipur and CIT (A)-II, Jaipur. In A.Y. 2006-07 and 2007-08, the ITAT (in ITA No. 901/JP/2009, dated 20.8.2010 for A.Y. 2006-07 and in ITA No. 540/JP/2011 dated 21.10.2011 for A.Y. 2007-08 respectively) have held that privilege fees paid by the assessee to the Govt. of Rajasthan is allowable as revenue expenditure. In A.Y. 2008-09, 2009-10, 2010-11 and 2011-12, the CIT (A)-II, Jaipur has also held the above expenditure to be revenue in nature. The facts of this year are similar to the facts of the above years. Following the above judgments of ITAT, Jaipur and CIT (A)-II,

Jaipur, privilege fees of Rs. 52,00,00,000/- is held to be allowable as revenue expenditure. The above addition made by the Assessing Officer is, therefore, not upheld. The ground of appeal is allowed.”

Therefore, respectfully following the order of coordinate Bench in ITA No. 901/JP/2009, dated 20.8.2010 for A.Y. 2006-07 and in ITA No. 540/JP/2011 dated 21.10.2011 for A.Y. 2007-08, we affirm the order of Id. CIT (A) and the ground of the revenue is hereby rejected.”

Taking a consistent view of the matter, we affirm the order of Id. CIT (A) and ground no. 1 of the revenue is hereby rejected.

4. Regarding ground no. 2, we find that the issue relating to deposit of contribution to ESI and PF is squarely covered by the various judicial pronouncements of Hon'ble Jurisdictional High Court in the assessee's own case as cited by the Id. Counsel. The Coordinate Bench of the Tribunal in the assessee's own case in ITA No. 1000/JP/2015 has decided the issue in para 6.3 of its order by observing as under :-

“ 6.3. We have heard the rival contentions and perused the material available on record. We find that the coordinate Bench of the Tribunal in ITA No. 166/JP/2012 by following the judgment of the Hon'ble Supreme Court in the case of CIT vs. Vinay Cement, 213 CTR 268 (SC) has decided the issue in favour of the assessee. The Hon'ble Jurisdictional High Court has also decided this issue in favour of the assessee in the cases of Jaipur Vidhyut Vithran Nigam Ltd., 265 CTR 62 (Raj.) and CIT vs. State Bank of Bikaner and Jaipur (2014) 99 DTR 131 (Raj.). In the light of above facts, we do not find any reason to interfere with the order of Id. CIT (A), which is hereby affirmed. The ground of the revenue is rejected.”

Therefore, placing reliance on the judgments of Hon'ble Rajasthan High Court and also following the decision of Coordinate Bench, we find no reason to interfere in the

order of Id. CIT (A), the same is hereby upheld. The ground of the revenue is rejected.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 20/03/2017.

Sd/-
(भागचन्द,)
(BHAG CHAND)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 20/03/2017.

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आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ACIT, Circle-6, Jaipur.
2. The Respondent – M/s. Rajasthan State Beverages Corporation Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1062/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

