

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA 'C' BENCH,  
KOLKATA**

Before : **Shri J. Sudhakar Reddy, Accountant Member** and  
**Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 664/Kol/2015** A.Y : 2006-07

**D.C.I.T., Cir-4(2), Kolkata,**  
Aaykar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069.

Appellant

-Vs-

**M/s. Stewart Hall (India) Ltd,**  
Camelia House,  
14, Gurusaday Road,  
Kolkata-700019,  
PAN: AAECs 3091C.

Respondent

**Appearances by:**

Shri David Z. Chawngth, Addl.CIT, Id. Sr.DR  
Shri P.N. Rajendra, Id.AR

Date of hearing : 10-08-2017

Date of pronouncement : 18-10-2017

**Shri. S.S.VISWANETHRA RAVI, JM:**

This appeal by the Revenue is directed against the order dated 02/01/2015 passed by the Commissioner of Income Tax(Appeals)-2, Kolkata for the assessment year 2006-07.

2. It is noticed that the appeal filed by the revenue is time barred by 17 days. For which the revenue filed an affidavit

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dated 15-05-2015 stating the reasons for delay in filing the appeal. On perusing the same and hearing both the parties, we condone the delay and dispose off the appeal same on merits.

3. The appellant Revenue has raised following grounds:-

*1. That on the facts and in circumstances of the case, the Id. CIT(A) erred on as well as in law in holding that cess on green leaves of Rs.53,03,855/- was allowable expenditure, ignoring the fact that cess on green leaves is attributable to core agricultural activities of the assessee governed by the State Agriculture Income Tax beyond the purview of the Central Income Tax and on the same issue SLP is pending before the Apex Court in the case of CIT Vs. AFT Industries.*

*2. That on the facts and in circumstances of the case the Id. CIT(A) erred on facts and well as in law in holding that employees contribution to PF of Rs.6,38,344/- is allowed if deposited before filing of return, ignoring the fact that employees contribution to PF is governed by the provisions of Section 36(1)(va) which provides that contribution to employees contribution to PF is to be made within due as specified in respective rule i.e. PF rule in this case.*

*3. That the appellant craves for leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.*

4. Brief facts of the case are that the assessee is company and involved in the business of manufacturing of Tea and filed return of income on 21-11-06 showing 'nil' income. Under scrutiny, notices u/s. 143(2) and 142(1) were issued and, in response to the said notices, the assessee appeared.

5. Ground no-1 is relating to disallowance made on account of Cess on green leaf. The contention of the Assessee is that the green leaf is purely an agricultural activity and as such, the cess levied on the production of the green leaf does not come under the purview of composite income and claimed deduction before applying Rule 8. According to AO the Revenue challenged the order of the Hon'ble Calcutta High Court in the case of AFT Industries before the Hon'ble Supreme Court and the Hon'ble Supreme Court admitted said SLP and in view of pendency of the matter, the AO

treated the cess is non deductible expenditure from the composite income of the assessee and added an amount of Rs. 53,03,855/-

6. Before the CIT-A the assessee relied on the order of the Calcutta High Court in the case of AFT Industries Ltd reported in 270 ITR 167. The CIT-A held as under:-

*4.1 I have examined the above issue. The Supreme Court of India while admitting the SLP of the Department against the decision of the jurisdictional High Court in the case of AFT Industries Ltd has neither stayed nor kept in abeyance the order of the jurisdictional High Court. In view of this position, the order of the jurisdictional High Court at 270 ITR 167 will continue to be in force till otherwise decided by the Hon'ble Supreme Court of India. Humbly following the decision of the Calcutta High Court at 270 ITR 167 I delete the disallowance of Rs. 53,03,855/- made by the AO on account of cess on green leaf. Ground No. 2 of the appeal is allowed.*

7. We find that, as matter stood thus, the Honourable Supreme Court dismissed the SLP filed by the appellant revenue and agreed with the interpretation of scope of Rule 8 of Income Tax Rules 1962 rendered by the Honourable High Court of Calcutta. The Learned AR placed copy of such order before us and submitted that the present appeal may be disposed of in pursuance of the decision of Honourable Supreme Court and learned DR submits that the appellant revenue did not succeed in SLP and the decision of Honourable High Court of Calcutta has become final and binding on the appellant revenue in view of the confirmation of the such decision by the Honourable Supreme Court. The relevant portion of which is reproduced herein below:

*"The respondent-assessee had paid cess on green leaf to the Government of Assam which was levied under Assam Taxation ( On Specified Land) Act, 1990. In its income tax return, it had claimed the same as deduction which has been allowed by the High Court. The relevant discussion in this behalf is as under:-*

*"However, the learned Tribunal had held that the deduction is eligible after computing the income under Rule 8 and the apportionment is to be made only after the income is so computed. Such apportionment cannot be made before the deduction. Rule 8 of the Income Tax: Rules, 1962 requires that the computation is to be made as if by fiction the entire income out of the tea grown and manufactured as income assessable under the Income Tax Act, 1961. In view of Rule 8, the income so computed is to be apportioned 60: 40 of which 40 is assessable to tax under the Act. It does not provide that after apportionment of the 60 % of the income so computed shall again be required to be computed under the Agricultural Income Tax Act. On the other hand, this 60% is exposed and becomes exigible to tax under the Agricultural Income Tax Act. without being required to be assessed under the said Act by reason of the fiction so created. Therefore, the cess paid has rightly been excluded while computing the income under Rule 8 of the tea grown and manufactured."*

*In arriving at the aforesaid conclusion, the High Court has referred to the various judgments of this Court.*

*We are of the opinion that the High Court has rightly interpreted the scope of Rule 8 of the Income Tax Rules 1962. We, thus, find no merit in this appeal which is, accordingly, dismissed. "*

8. In accordance with the principle as laid by the Hon'ble High Court of Calcutta in the case of AFT Industries which has been further strengthened by dismissal of SLP by the Honble Supreme Court, we hold that the income so computed is to be apportioned 60: 40 of which 40 is assessable to tax under the Act. Thus, ground no-1 raised is, accordingly dismissed.

9. Ground no. 2 is relating to deletion of addition made as disallowance towards PF of Rs. 6,38,344/-.

10. The AO found that the assessee company has not deposited employees' contribution to PF within specified date of Rs.6,38,344/-. Thus,

he added the impugned amount being not allowable as deduction u/s. 36(i)(va) of the Act to the total income of the assessee.

11. The CIT-A held as under:-

*"3.2 I am in agreement with the view of the AR of the appellant. The amount of Rs. 6,38,344/- which was disallowed by the AO as paid beyond due date has actually been paid before the due date of filing of the return u/s. 13991). I have examined the records of the appellant. The due date for filing of return for A.Y 2006-07 was 30/11/2006 and the amount of Rs. 6,38,344/- was paid much before the due date. This ratio has been upheld by the Hon'ble Supreme Court in the case of CIT vs. Alom Extrusions Ltd 319 ITR 306. Therefore, humbly following the judgement of Apex Court, I delete the addition of Rs.6,38,344/- made by the AO. Ground no. 1 of the appeal is allowed."*

12. In view of above, we find no infirmity in the impugned order of the CIT-A. The CIT-A has given relief to the assessee basing on decision of the Hon'ble Supreme Court in the case of *supra*. We uphold the same. Ground no.2 raised by the revenue is dismissed.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 18-10-2017.

Sd/-  
**J. Sudhakar Reddy**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Date: 18-10-2017

Copies to :

\*\*PP/SPS

(1) Appellant/Department: The DCIT, Cir-4(2), Kol., P-7 Chowringhee Square, Kolkata-69.

(2) Respondent/Assessee: M/s. Steward Hall (India) Ltd, Camelia House, 14 Gurusaday Road, Kolkata-19.

(3) Commissioner of Income-tax (Appeals)

(4) Commissioner of Income Tax, Kolkata

(5) The Departmental Representative

(6) Guard File By order

Sr.PS/H.O.O  
ITAT, Kolkata

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