



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER

ITA no.1335/Mum./2017
(Assessment Year : 2011-12)

Isha steel Treatment Pvt. Ltd.
100, Hariyali Villae
LBS Marg, Vikhroli (W)
Mumbai 400 083 PAN – AAACI2583F

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-10(3), Mumbai

..... Respondent

Assessee by : Shri Shekhar Gupta
Revenue by : Shri Virendar Singh

Date of Hearing – 21.06.2018

Date of Order – 29.06.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is against order dated 30th November 2016, passed by the learned Commissioner (Appeals)-24, Mumbai, for the assessment year 2011-12.

2. The issue in the present appeal is confined to disallowance of deduction claimed on account of provision for gratuity amounting to ₹ 12,62,945.

3. Brief facts are, the assessee, a company, is engaged in the business of heat treatment of metals on job work basis. For the impugned assessment year assessee filed its return of income on 26th September 2011 (wrongly mentioned in the assessee order as "26th September 2009") declaring total income of ₹ 90,20,449. During the assessment proceedings, the Assessing Officer noticing that the assessee has debited an amount of ₹ 12,62,945 to the Profit & Loss account towards provision for LIC Gratuity Scheme, called upon the assessee to justify the claim. As stated by the Assessing Officer, on the query raised by him the assessee's representative submitted that the said amount was inadvertently not added to the total income. The Assessing Officer observed, since, the payment is in the nature of unascertained liability and more over, the gratuity fund has not been approved by the competent authority, the provision for gratuity as claimed by the assessee is not allowable. Assessee challenged the aforesaid disallowance before the first appellate authority.

4. In course of hearing before the learned Commissioner (Appeals), the assessee besides justifying its claim of deduction also brought to the notice of the learned Commissioner (Appeals) the order passed by the Tribunal in assessee's own case for assessment year 2007-08 in ITA no.1671/Mum./2011, dated 8th January 2014, wherein the Tribunal has directed the Assessing Officer to allow the deduction claimed by

the assessee towards contribution to LIC Gratuity Scheme after verifying the actual payment. While doing so the Tribunal had observed that irrespective of the fact whether the gratuity fund is approved by the commissioner or not assessee's claim should be allowed if the assessee is continuously claiming the deduction on the basis of such contribution. The learned Commissioner (Appeals) after considering the submissions of the assessee and perusing the order of the Tribunal, however, did not accept the claim of the assessee. He observed, the decision of the Tribunal will not be applicable to the facts of the present case, since, the Tribunal has not decided the issue as to whether the deduction claimed in respect of a provision made by the assessee is allowable or not. Ultimately, learned Commissioner (Appeals) sustained the disallowance of deduction claimed by the assessee on the reasoning that, since, the provision made by the assessee is in the nature of an unascertained liability, the same cannot be allowed.

5. At the outset, learned Authorised Representative disputed the observations of the departmental authorities that assessee has accepted the addition of the amount during assessment proceeding. Further, he submitted, the issue is covered by the decision of the Tribunal in assessee's own case for assessment year 2007-08. He submitted, the finding of the first appellate authority that the amount

claimed as deduction is a unascertained liability is contrary to the facts on record as the assessee has actually paid the amount in dispute before the due date of filing of return of income under section 139(1) of the Income Tax Act, 1961 (for short "*the Act*"). In this context, he drew our attention to the ledger account copy of LIC Gratuity Scheme indicating payment made of ₹ 12,62,945 on different dates in the year 2011. Thus, it was submitted, it cannot be said that the provision made towards gratuity is an unascertained liability. The learned Authorised Representative submitted, though, the assessee has its own gratuity fund approved by the competent authority, in any case of the matter, the gratuity amount having been deposited in an approved gratuity fund of LIC it should be allowed.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, the Assessing Officer disallowed assessee's claim of deduction towards contribution to gratuity fund for two reasons; firstly, the gratuity fund is not approved by the competent authority and secondly; the amount claimed as deduction is a provision, hence, an unascertained liability. Whereas, the learned Commissioner (Appeals) while distinguishing the order of the Tribunal in assessee's own case for assessment year

2007-08, has observed that the issue decided by the Tribunal is different. In other words, the learned Commissioner (Appeals) did not accept the first reasoning of the Assessing Officer that the contribution has not been made to an approved gratuity fund. At least there is no adverse finding of the learned Commissioner (Appeals) on this issue. Thus, the learned Commissioner (Appeals) has confined his finding only to the second reasoning of the Assessing Officer, whether the deduction claimed by the assessee is on account of an unascertained liability? That being the case, we confine our decision to this issue only. Suffice to say, there is no dispute to the fact that the assessee has contributed the gratuity amount to an approved gratuity scheme of LIC. Be that as it may, now we will proceed to examine whether the deduction claimed on account of payment of gratuity can be treated as unascertained liability, the only reason on which the learned Commissioner (Appeals) has sustained the disallowance. At this juncture, it will be necessary to look into the provisions of section 43B of the Act which mandates that certain deductions can be allowed only on actual payment. Clause-(b) of section 43B of the Act specifies payment to gratuity fund as one of the payment in respect of which deduction can be allowed only on actual payment. However, the proviso to section 43B of the Act carves out an exception by providing that the restrictions imposed relating to deduction on actual payment will not apply if the amount in respect of which deduction has been

claimed was actually paid before the due date of furnishing of return of income under section 139(1) of the Act. From the ledger account copy of LIC Gratuity Scheme submitted before us, we find that the gratuity amount claimed as deduction has been paid by the assessee well before the due date of furnishing of return of income under section 139(1) of the Act for the impugned assessment year, which is 30th September 2011. That being the case, the payment made falls within the exception provided under proviso to section 43B of the Act, hence, is allowable as a deduction. Accordingly, the finding of the learned Commissioner (Appeals) that the deduction claimed in respect of unascertained liability is contrary to the facts on record, hence, unacceptable. In view of the aforesaid, we allow assessee's claim of deduction, and thereby, delete the addition made by the Assessing Officer. Ground raised is allowed.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 29.06.2018

Sd/-
DR. A.L. SAINI
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.06.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai