

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'ए', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ITA No. 1412/CHD/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Kangra Central Co-op Bank Ltd., Civil Lines, Dharamshala, Distt.- Kangra(HP).	बनाम VS	The JCIT, Palampur Range, Palampur (HP).
स्थायी लेखा सं./PAN No: AAAJT0749B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ahwani Kumar, CA

राजस्व की ओर से/ Revenue by : Smt. Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 31.10.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 12.10.2016 of CIT(A) Palampur pertaining to 2011-12 assessment year.

2. The appeal had been argued by the parties on 09.01.2018, however, subsequently it was fixed for clarification and for one reason or the other, hearing could not conclude. Accordingly, the parties were directed to re-argue the appeal afresh on the next date of hearing due to lapse of time.

3. The ld. AR inviting attention to ground raised in the present appeal submitted that the assessee in the facts of the present case, admittedly argued in the course of the assessment proceedings for allowance of expenses of bonus/PF of Rs. 1,76,13,207/- paid on 10.11.2010. It was his submission that the claim was rejected by the AO relying upon the decision of the Apex Court in the case of Goetz India Ltd. V CIT 284 ITR 323 (S.C). The issue was carried in appeal before the CIT(A) who also rejected the claim holding that the claim had not been made by way of revised return. The ld. AR submitted that the assessee had claimed the

same in 2010-11 assessment year and since it had not been paid in the said year, a disallowance was made u/s 43B. In the circumstances, it was his limited prayer that it may be allowed in the year under consideration. The parties had been directed to clarify whether the factum of payments stood accepted by the department or not.

4. The Id. Sr.DR on query stated that she relies upon the orders. It was specifically put to her whether this fact was required to be verified as it appears that on an earlier date, such an offer had been made by the assessee. The Id. Sr.DR on going through the record submitted that verification of factum of payment may not be required as it was an accepted fact. The departmental case is limited to the issue that the claim should have been made by way of revised return which was the specific reason for denying the claim.

4.1 The Id. AR in support of the allowability of assessee's prayer relied upon decision of the jurisdictional High Court in the case of Ramco International (2011)332 ITR 306(P&H). Reliance was also placed upon decision of Bombay High Court in the case of CIT V Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bombay). Apart from that, reliance was also placed upon order of Judgement of the Hon'ble Supreme Court of India in the case of Commissioner of Income-Tax Vs. Mahalakshmi Sugar Mills Co. Ltd. reported at [1986] 160 ITR; judgement of the Hon'ble High Court of Delhi in the case of Commissioner of Income-Tax Vs. Sam Global Securities Ltd. reported at [2014] 360 ITR 682 (Delhi) and order of Judgement of the Hon'ble High Court of Delhi in the case of Commissioner of Income-Tax, Delhi-II Vs. Jai Parabolics Springs Ltd. reported at [2008] 306 ITR 42 (Delhi).

5. We have heard the rival submissions and perused the material on record. A perusal of the assessment order para 5 shows that the factum of payment of bonus/PF is not in dispute so far as the Revenue is concerned. For ready reference, we extract the relevant para :

“5. The Id. AR of the assessee vide para 4 of his letter dated 25.2.2014 has asked for allowance of the bonus/PF of Rs. 1,76,13,207/- paid on 10.11.2010 which was disallowed in the assessment year 2010-11. Since the assessee has neither claimed the same in the Income Tax return nor in the revised return, there is no provision under the I.T.Act. to make amendment in the return of income by modifying an application at the assessment stage without revising the return, The reliance is placed on the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd. Vs Cit reported at 284 ITR 323(SC). Hence the plea of the assessee is rejected.”

6. A perusal of the impugned order shows that the addition has been upheld by the CIT(A) on the following reasoning :

“In view of the above mentioned facts, it is observed that order for A.Y. 2010-11 was passed by the Ld. A.O, on 05.03,2013 and appellant should have revised its return of income by 31.03.2013 in respect of allowance of bonus of Rs, 1,76,13,207/- paid on 10.11.2010 which was disallowed in A.Y. 2010-11. Since, the return of income was not revised by the appellant the Ld. A.O. has rightly rejected the plea of the appellant and bonus paid on 10.11,2010 was not allowed in the A.Y. 201,1-12, Therefore disallowance of Rs. 1,76,13,207/- u/s 43B of the IT. Act by the Ld. A.O. is upheld.”

7. Thus, the factum of incurring the said expenditure is not in dispute. The fact that it was claimed in the earlier year is a fact on record. The fact that within the said financial year, it was not allowed is also a fact on record. The fact remains that the said expenditure has been incurred wholly and exclusively for the purpose of business purpose of the assessee is also not in dispute. We find on considering the judicial precedent as addressed by the jurisdictional High Court in the case of CIT Vs Remco International 332 ITR 306 apart from the decisions of the Bombay High Court in the case of Pruthvi Brokers & Shareholders 349 ITR 336 and Delhi High Court in the case of CIT Vs Sam Global Securities Ltd. 360 ITR 682. We see no good reason on the basis of which addition can be sustained. The ld. AR in support of the allowability of the assessee's claim has submitted that no doubt, time was available for filing a revised return, however, inadvertently due to oversight or ignorance, of the tax advisors etc. the revised return has not been filed. Thus, considering the precedent relied upon, where the said expenditure in 2010-11 assessment year, admittedly has not been allowed, we direct the AO to give relief to the assessee to the extent PF/Bonus paid in the year under consideration. Accordingly, ground raised by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 31.10. 2018.

Sd/-
(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

Sd/-
(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

“पूनम”

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

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar