

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2555/PUN/2016  
निर्धारण वर्ष / Assessment Year : 1999-2000

Zain Corporation,  
372, Raviwar Peth,  
Pune - 411002

PAN : AAAFZ0811G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Deputy Commissioner of Income Tax,  
Circle - 5, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Hari Krishan  
Revenue by : Shri A.K. Modi

सुनवाई की तारीख / Date of Hearing : 08-08-2018

घोषणा की तारीख / Date of Pronouncement : 05-11-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Pune dated 15-07-2016 for the Block Period 01-04-1988 to 16-03-1999.

2. The assessee by way of this appeal is in second round of litigation before the Tribunal. The assessee in instant appeal has assailed

disallowance of VAT payment against undisclosed sales unearthed during search proceedings. In first round the appeal of assessee in ITA No. 1751/PUN/2004 was partly allowed. The issue relating to allowability of VAT payment against the undisclosed income on undisclosed sale was restored back to the file of Assessing Officer for verification by the Tribunal.

3. Shri Hari Krishan appearing on behalf of the assessee submitted that search was conducted in the case of assessee on 16-03-1999. During the course of search unaccounted sales of Rs.23,80,000/- were detected. In the final audited accounts the assessee incorporated unaccounted sales of Rs.23,80,000/- in the cash sales account. As against aforesaid unaccounted sales the assessee paid sales tax of Rs.65,000/- on 22-07-1999. While filing regular return of income u/s. 139 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") the assessee reduced the gross profit of Rs.5,35,325/- arising from the unaccounted sales of Rs.23,80,000/-. The assessee also reduced corresponding expenditure of Rs.65,000/- on account of sales tax paid in respect of unaccounted sales Rs.23,80,000/-. The net income of Rs.4,70,320/- was declared as undisclosed income for assessment year 1999-2000 in the block return of income filed by the assessee u/s. 158BC of the Act. The Assessing Officer while completing the block assessment u/s 158BC disallowed assessee's claim of expenditure in respect of sales tax paid Rs.65,000/-. In First Appellate proceedings the Commissioner of Income Tax (Appeals) confirmed disallowance of Rs.65,000/-. The assessee carried the matter in appeal before the Tribunal in ITA No. 1751/PUN/2004 (supra). The Tribunal restored the issue back to the file of Assessing Officer for the limited purpose of ascertaining whether the claim of sales tax Rs.65,000/- was related to undisclosed income or pertained to the regular accounts. The Assessing Officer in remand proceedings held that the claim of

assessee with respect to payment of sales tax Rs.65,000/- is hit by the provisions of section 43B and hence disallowed the same as payments were made in the period relevant to the next assessment year i.e. assessment year 2000-2001. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order confirmed the findings of Assessing Officer. The ld. AR assailed the findings of Commissioner of Income Tax (Appeals) by making following written submissions :

**A.** *It is respectfully submitted that both the Ld. Assessing Officer and the Ld. Commissioner of Income Tax (Appeals) have failed to appreciate that the expenditure of Rs.65,000/- in the shape of sales tax has been incurred in respect of the unaccounted sales of Rs.23,80,000/- detected in the course of the search and that the amount of sale tax Rs.65,000/- has been duly paid to the government on 22-07-1999 i.e. before the due date for filing of the return u/s 139(1) of the Income Tax Act, and that the amount of sale tax of Rs.65,000/- has not been claimed against the regular income.*

**B.** *Since the expenditure of Rs.65,000/- on account of sales tax related to the unaccounted income which has been duly declared in the block assessment return for the period relevant to A.Y. 1999-2000 and has been accordingly assessed the assessee is eligible for deduction of Rs.65,000/-.*

**C.** *Even by the application of Section 43B of the Income Tax Act the assessee is eligible for deduction as the amount of sale tax has been paid before the due date for filing of the return u/s 139(1) of the Act.*

**D.** *The lower authorities have overlooked the fact that by way of Section 158BH in making the assessment u/s 158BC of the Income Tax Act all other provisions of the Income Tax Act shall apply for computation of income for making the assessment u/s 158BC of the Income Tax Act.*

**E.** *Even by the matching principle of income and expenditure, the assessee is eligible for deduction of Rs.65,000/- because the expenditure of Rs.65,000/- on account of sale tax in respect of the unaccounted sales relates to the profit of Rs.5,35,320/- arising from unaccounted sales that has been brought to tax in the block assessment for the period relevant to Assessment Year 1999-2000.”*

4. On the other hand Shri A.K. Modi representing the Department vehemently defended the impugned order. The ld. DR submitted that the assessee has deposited sales tax on 22-07-1999 i.e. in the period relevant

to assessment year 2000-01. Hence, the claim of assessee cannot be allowed in the assessment year under appeal.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue raised in the appeal is against disallowance of VAT payment Rs.65,000/- u/s. 43B of the Act.

6. It is an undisputed fact that the assessee made VAT payment Rs.65,000/- on 22-07-1999. This fact is also evident from the challan placed on record at page 12 of the paper book. The assessee purportedly paid VAT Rs.65,000/- against the undisclosed sales of Rs.23,80,000/-. Since, the assessee offered the undisclosed income on undisclosed sale in the return of income filed under the provisions of section 158BC of the Act, the assessee claimed expenditure relatable to undisclosed sales, accordingly. The assessee paid VAT corresponding to undisclosed sales after the end of relevant financial year. However, the VAT amount was paid to the Government exchequer before due date of filing of return of income u/s. 139(1) of the Act. When this issue came up for adjudication before the Co-ordinate Bench of the Tribunal in first round in ITA No. 1751/PUN/2004 (supra). The Tribunal held as under :

*“12. Apropos the other issue regarding claim of VAT payment the question is that whether the said claim was a part of the regular books of accounts on it was claimed only against the undisclosed income forming part of the block period.*

*13. Provisions of the act are unambiguous that the income as also the expenditure which are part of the regular returns and are duly disclosed in the regular course of business must not be disturbed and should be out of the ambits of the provisions of Chapter-XIV B of Act. In this regard sec. 158BA sub sec. (3) is very much clear that where the assessee proves to the satisfaction of the AO, that any part of income relates to an assessment year for which the previous year has not ended or the date of filing the return of income u/s 139 is not expired, then such income or the transaction recorded in the books of accounts maintained in the normal course should not be*

*included in the block period to determine the undisclosed income. It is also important to note that to avoid multiplicity of proceeding or double tax of the same amount the Statute has prescribed the method of computation of income of undisclosed income for the block period in section 15888(c) that the undisclosed income shall be the aggregate of the total income falling within the block period on the basis of material found at the time of search but to be reduced by the income determined on the basis of entries as recorded in the books of accounts and other documents mentioned in the normal course of business. A query was raised whether the claim of VAT payment was related to undisclosed income or pertained to the regular accounts, however not denied specifically that no such VAT payment was made in the regular return. Since the fact of VAT payment as yet to be ascertained by comparing the assessment proceedings based upon regular return, with the proceedings as enunciated under Chapter-XIV B; the correct position can be ascertained thereafter only. For this purpose we remit this ground back to A.O. to decide accordingly. This ground may be treated as allowed for statistical purpose only. Assessee's appeal partly allowed."*

7. A perusal of the Tribunal order shows that the issue was restored to Assessing Officer for verification of fact, whether the VAT amount Rs.65,000/- was paid in respect of undisclosed sale or regular sales. Disallowability of such expenditure u/s. 43B was not the issue before Tribunal and hence the issue was not restored to Assessing Officer to examine the same. We find that the Assessing Officer instead of strictly complying with the directions of Tribunal went a step head in the remand proceedings to disallow the amount under the provisions of section 43B of the Act. The Commissioner of Income Tax (Appeals) also affirmed the action of Assessing Officer in disallowing the payment of VAT under the provisions of section 43B of the Act.

8. Be that as it may, it is a well settled principle that certain deductions (taxes) are to be allowed only on actual payments. Undisputedly assessee paid VAT in respect of undisclosed sales made during the period relevant to assessment year after the close of financial year but before the due date of filing return of income. A proviso to section 43B allows immunity from disallowance where the statutory payments are made before the due date

of filing return of income u/s. 139(1) of the Act. In the instant case VAT payments were made by assessee on 22-07-1999 i.e. before the due date of filing return of income. The payment of VAT to Government exchequer is supported by receipt at page 12 of paper book. Therefore, no disallowance u/s. 43B is warranted. Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

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

Order pronounced on Monday, the 05<sup>th</sup> day of November, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05<sup>th</sup> November, 2018

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-4, Pune
4. प्रधान आयकर आयुक्त / The Pr. CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune