

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA
[Before Shri P.M. Jagtap, Vice President]**

I.T.A. No. 1190/Kol/2018
Assessment Year: 2012-13

Dukenhengra Tea Pvt. Ltd.Appellant
23, Pankaj Mullick Sarani,
Kolkata – 700 019.
[PAN: AABCD 1805 C]

Tax Recovery Officer – 2 Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri P.J. Bhide, FCA appearing on behalf of the Assessee.

Shri Baijnath Singh, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : December 17, 2018

Date of pronouncing the order : December 19, 2018

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 2, Kolkata dated 05.04.2018 and the grounds raised by the assessee therein read as under:

“i. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) – 2, Kolkata erred in confirming the addition of Rs. 20,67,301/- made by the Assessing Officer on account of cess on Green Leaf, paid by the appellant to the State Government of Assam.

ii. That both the Assessing Officer as well as the Ld. CIT(A) – 2, Kolkata erred in holding that the authorized representative of the appellant admitted at any stage disallowance of the above cess.

iii. That on the facts and in the circumstances of the case, the Ld. CIT(A) – 2, Kolkata erred in not directing the Assessing Officer to allow credit of Tax of Rs. 2,988/- deducted by the Assam Gas Company Ltd. in the interest credited to the appellant’s account.”

2. I have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned

representatives of both the sides, the common issue involved in Ground No. 1 and 2 of this appeal relating to the addition made by the AO and confirmed by the Ld. CIT(A) on account of cess on green leaf is squarely covered in favour of the assessee by the decision of Hon'ble Kolkata High Court in the case of CIT vs A.F.T. Industries Ltd. 270 ITR 167 wherein the similar issue was decided by the Hon'ble Kolkata High Court in paragraph no. 3 which reads as under:

"3. Having regard to the provisions contained in Rule 8 with which we had occasion to deal in Union of India v. Warren Tea Ltd. [2004] 266 ITR 226 (Cal), A. P. O. No. 792 of 1999, disposed of by us on January 15, 2004, it appears that in respect of computation of income of tea grown and manufactured, a fiction has been created under which both the agricultural component and the business component of the income would be assessed together for the purpose of computing the income under the Act and only after the computation of the total income, the apportionment is to be made determining 60 per cent. as agricultural income and 40 per cent as exigible to tax under the Act. During the process of the computation, all deductions allowable at the time of computation are to be allowed and that was rightly allowed. Inasmuch as if the income for tea grown was assessed under the agricultural income-tax, in that event, the same cess paid of green leaf would have been eligible for deduction at the time of computation of the agricultural income. But when by fiction in respect of tea grown and manufactured, the agricultural component of the income out of the tea grown is also computed under the Income-tax Act along with the income out of the tea manufactured from the tea grown. When by fiction the income as computed as an income under the Act, all deductions as are available both for the agricultural component and for the business component of the income are to be allowed as a natural corollary to the fiction so created. Such deductions, which are allowed in order to arrive at the total income exigible to tax, are to be allowed and the apportionment of the total income so computed is to be made. If the agricultural part of the deductions is made applicable for deduction from the 60 per cent of the total income so computed, in that event, this 60 per cent would be again made assessable under the Agricultural Income-tax Act which is not permissible. In that event, the purpose of creating fiction would stand frustrated. It would then be a concept completely foreign to the fiction so created. Therefore, the entire

amount paid as cess on green leaf seems to be eligible for deduction with regard to which we do not find any confusion.”

3. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of A.F.T. Industries Ltd. (supra), I respectfully follow the decision of Hon'ble Jurisdictional High Court rendered in the said case and decide this issue in favour of the assessee. Ground No. 1 and 2 are accordingly allowed.

4. At the time of hearing before us, the learned counsel for the assessee has not pressed ground No. 3 raised in this appeal of the assessee by submitting that the Ld. CIT(A) vide his impugned order has already directed the AO to allow credit of TDS of Rs.2,988/- to the assessee. Ground No. 3 of the assessee's appeal is accordingly dismissed as not pressed.

5. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 19th December, 2018.

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 19/12/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Dukenhengra Tea Pvt. Ltd., 23, Pankaj Mullick Sarani, Kolkata – 700 019.
2. Tax Recovery Officer – 2, P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,
Assistant Registrar / H.O.O.
ITAT, Kolkata