

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.839/Ind/2017
Assessment Year: 2011-12**

ACIT Khandwa	<u>बनाम/</u> Vs.	M/s. Chhaganlal Kishanlal & Co. Bahadarpur Road, Burhanpur (M.P.)
(Revenue)		(Respondent)
PAN: AACFC0854C		
Revenue by	Shri V. J. Boricha, Sr. DR	
Respondent by	Shri S.N. Agrawal & Pankaj Mogra, CAs	
Date of Hearing:	24.01.2019	
Date of Pronouncement:	06.02.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal by Revenue pertaining to A.Y. 2011-12 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II Indore, (in short 'CIT(A)'), dated 20.09.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on

07.03.2016 by ACIT, Khandwa. The Revenue has raised following grounds of appeal:

“Whether on the facts and in the circumstances of the case the ld. CIT(A) is justified in deleting the disallowance of Rs.6,82,415/- in respect of the diversion of tax.”

2. Brief facts as culled out from the records are that assessee is a partnership firm engaged in the Trading of P.P. Bales, Cotton seeds and all types of grains. Income of Rs.9,77,070/- declared in e-return of income filed on 28.09.2011. Notice u/s 143(2) of the Act was duly served upon the assessee. The assessee firm paid an amount of Diversion tax of Rs.6,82,415/- and claimed the deduction for the same on payment basis. The claim of the assessee was duly accepted in the regular assessment proceeding. Subsequently, notice issued u/s 154 of the Income Tax Act for disallowance of Diversion Tax. In the rectification order, the Learned assessing officer disallowed the diversion tax but also accepted that the amount of diversion Tax was paid for the land used for the purpose of business and not in respect of agricultural land. Hence, the appellant argued that in any case, the amount of diversion tax was an allowable deduction.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and allowed.

4. Now the revenue is in appeal before the Tribunal.

5. Ld. Departmental Representative vehemently argued supporting the order of assessing officer.

6. We have heard the rival contentions, perused the record placed before us. Sole grievance of the Revenue is against the order of Ld. CIT(A) deleting disallowance of Rs.6,82,415/- in respect of diversion tax claimed as an expenditure by the assessee. In the regular assessment proceedings u/s 143(3) of the Act, assessee's claim of the expenditure of Rs.6,82,415/- was allowed as a business expenditure but subsequently Ld. AO passed an order u/s 154 of the Act disallowing the diversion tax of Rs.6,82,415/-. We find that the Ld. CIT(A) has deleted the disallowance of diversion tax of Rs.6,82,415/- observing as follows:

Ground No.1 & 2

4.0 *These grounds of appeal are with regard to addition of Rs.6,82,415/- on account of disallowance of diversion of Tax. I have carefully gone through the assessment order as well as submission of the appellant in this*

regard.

4.1 The appellant firm had paid the amount of Diversion tax of Rs 6,82,415/- and claimed the deduction for the same on payment baSIS The amount of Diversion tax was payable annually and the same was allowable as business expenditure. The claim of the appellant was duly accepted in the regular assessment proceeding. The notice as issued U / s 154 of the Income Tax Act for disallowance of Diversion Tax and the same was also disallowed. In the rectification order, the assessing officer had accepted that the amount of Diversion Tax was paid for the land used for the purpose of business and not in respect of Agricultural land. Hence, the appellant argued that in any case, the amount of diversion tax was an allowable deduction.

4.2 The appellant has further argued that the claim of deduction of diversion tax on payment basis was also allowable even u/s 43 B of the Income Tax Act. Hence, as per the appellant the claim of deduction of Diversion Tax Was legal and proper and for the purpose of business only.

4.3 The appellant has relied on the following decisions:-

S. N.	Name of Decision	Citation
01.	CIT V/s. Reliance Industries Ltd.	48 taxmann.com 362 (Bombay)
02.	Kesharwani Zarda Bhandar VIs CIT	349 ITR 519 (All)
03	KS.Venkatesh V/s DCIT	63 taxmann.com 343 (Kar)
04.	CIT V/s India Nippon Electricals Ltd	302 ITR 49 (Madras)

4 This is a fact in this case that the diversion of tax had been allowed by the AO u/s 143(3) of the IT Act during the course of assessment proceedings and alter the objection was raised by the audit party, the AO disallowed the said

diversion amount and added back to the appellant's income. I have carefully gone through the above cited decisions. In all the above judicial decisions the appeal had been allowed by the judicial authorities' u/ s154 of the IT Act in favour of the appellant and given relief to the appellant. So, in the light of the above judicial decisions, I don't agree with the findings of the AO and accordingly these grounds of appeal are allowed.

7. The above finding on fact of the Ld. CIT(A) along with reliance place on various judgments appearing para 4.3 in the order of Ld. CIT(A) goes uncontroverted by the revenue authorities. We are therefore inclined to hold that the alleged amount of Rs.6,82,415/- has been rightly claimed as business expenditure. No interference is called for in the finding of Ld. CIT(A). The ground of the revenue is dismissed.

8. In the result, appeal of the revenue stands dismissed.

Order was pronounced in the open court on 06.02.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 06/02/2019

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order
Assistant Registrar