

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.891/Bang/2019
Assessment year : 2014-15

The Income-tax Officer, Ward-1(1)(3), Bengaluru.	Vs.	M/s ATC Beverages Pvt. Ltd., No.202, Money Centre, 4 th Floor, 121, Koramangala Industrial Area, Hosur Road, Bengaluru. PAN – AAECA 7901 R.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.N Siddappaji, Addl. CIT (DR)
Respondent by	:	Shri V Sridhar, C.A

Date of hearing	:	23.07.2019
Date of Pronouncement	:	23.07.2019

ORDER

Per B.R Baskaran, Accountant Member

The revenue has filed this appeal challenging the order passed by Ld CIT(A)-1, Bengaluru and it relates to the assessment year 2014-15 on the following issues:-

- (a) Disallowance of employees contribution to ESI
- (b) Rejection of right of carry forward of losses.

2. The assessee is engaged in the business of manufacture of soft beverages. The assessment was completed by the AO u/s 143(3) of the Act making above said disallowances. Since the Ld CIT(A) granted relief on above issues, the revenue has filed this appeal.

With regard to the second issue cited above, the revenue is contending that the Ld CIT(A) has violated provisions of Rule 46A by admitting additional evidences without confronting them with the AO.

3. We heard the parties and perused the record. The first issue relates to disallowance of employees contribution to ESI made u/s 36(1)(va) of the Act, on the reasoning that the same has been paid beyond the due date prescribed under the ESI Act. The Ld CIT(A) allowed the claim by following the decision rendered by Hon'ble Karnataka High Court in the case of Sabari Enterprises (2008)(298 ITR 141)(Kar), on noticing that the assessee has paid the employees contributions before the due date prescribed for filing return of income u/s 139(1) of the Act.

4. Since the Ld CIT(A) has followed the binding decision rendered by Hon'ble Karnataka High Court in the case of Sabari Enterprises (supra) on an identical issue, we do not find any reason to interfere with the order passed by Ld CIT(A) on this issue.

5. The next issue relates to the rejection of claim for carry forward of losses. The AO noticed that there was a change in shareholding pattern in the assessee company during the financial year relevant to the assessment year under consideration, i.e., the AO noticed that 61.72% of the shareholding has changed hands. Since the AO was doing limited scrutiny, he did not call for details thereof. However, without examining the relevant details, the AO held that the provisions of sec.79 shall be applicable and

accordingly held that the assessee shall not be entitled to carry forward its losses.

6. Before Ld CIT(A), the assessee submitted all the relevant details and submitted that there was no change in the “beneficiary”, even though there is change in the name of beholder of shares. The Ld CIT(A), on being convinced with the information and explanations furnished by the assessee, set aside the order of the AO. The revenue is contending that there is violation of Rule 46A of the I T Rules in not confronting the details with the AO.

7. We heard the parties and perused the record. Admittedly, the AO has denied the right of carry forward of losses without calling for explanations from the assessee. However, the Ld CIT(A) has examined those details and has come to the conclusion that the provisions of sec.79 are not applicable. Since the Ld CIT(A) has examined the documents and details furnished before him, the revenue is contending that there is violation of Rule 46A of the I T Rules. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for examining it afresh by confronting the relevant details with the AO. After affording adequate opportunity to the assessee, the Ld CIT(A) may take appropriate decision in accordance with law.

8. In the result, the appeal of the revenue is treated as partly allowed.

Order pronounced in the Open Court on **23rd July, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 23rd July, 2019.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.