



ITA No.2136/Mum/2018
Astoria Agro & Allied Industries Private Limited
Assessment Year :2014-15

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.2136/Mum/2018
(निर्धारण वर्ष / Assessment Year:2014-15)

Astoria Agro & Allied Industries Private Limited Gate No.187, A/P Katfal Baramati Pune-413 102.	बनाम/ Vs.	DCIT-Circle 12(1)(1) Room No.223, Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAICA-4511-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Ms. Aarti Vissanji- Ld. AR
Respondent by	:	Ms. R. Kavitha - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	01/08/2019
घोषणा की तारीख / Date of Pronouncement	:	09.08.2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-20, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-20/DCIT-12(1)(1)/11-10645/16-17* dated 08/11/2017 on following grounds of appeal: -



On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in-

1. confirming the disallowance made by the Ld. AO U/s. 14A r.w. Rule 8D(2)(iii) of Rs. 15,075/- in the absence of dividend (exempt) income earned/received by the appellant for the assessment year under reference.
2. confirming the disallowance made by the Ld. AO of employees' contribution to Provident Fund U/s. 36(1)(va) r.w.s. 2(24)(x) of Rs. 70,152/- even though the said contribution is paid on or before the due date of filing Return of Income for the assessment year under reference.
3. confirming the disallowance made by the Ld. AO of provision for excise duty U/s. 43B of Rs. 1,02,69,347/- out of total excise duty provided for the year of Rs.3.25,98,3957- even though same is paid on or before the due date of filing Return of Income prescribed U7s. 139(1) for the assessment year under reference.

2. Facts in brief are that the assessee being resident corporate assessee stated to be engaged in manufacturing of *Sugar & Agro-based industry*, was assessed for year under consideration u/s 143(3) on 28/12/2016 wherein the returned loss of Rs.587.12 Lacs was reduced to Rs.483.58 Lacs on account of certain adjustments / additions / disallowances. As evident from grounds of appeal, the subject matter of present appeal before us is (i) disallowance u/s 14A (ii) Addition u/s 43B for late deposit of Provident Fund Contribution (iii) Addition u/s 43B on account of provision for excise duty.

3. Upon hearing rival submissions, our adjudication on the stated issues is given in the succeeding paragraphs.

3.1 Disallowance u/s 14A for Rs.15,075/-

This addition represent disallowance u/s 14A read with Rule 8D(2)(iii) @0.5% of average investments held by the assessee. The undisputed position that emerges is the fact that the assessee has not earned any exempt income during the year and therefore, no disallowance, as settled in catena of judicial pronouncements, would be warranted in such



a case. Hence, by deleting this addition, we allow ground no.1 of the appeal.

3.2 Disallowance u/s 43B for Rs.70,152/-

During assessment proceedings, upon perusal of Tax Audit Report, it transpired that there was delay in deposit of Provident Fund contribution for Rs.70,152/- and therefore, the same was added to the income of the assessee u/s 43B. Before Ld. CIT(A), the assessee placed reliance on the decision of Hon'ble Supreme Court in **CIT V/s Alom Extrusions Ltd. [319 ITR 306]** to submit that since the payment were made before due date of filing of return of income, the deduction of the same would be allowable to the assessee. However, Ld. first appellate authority, observing that the assessee failed to establish that contributions were deposited before due date of filing of return, confirmed the stand of Ld. AO. The Ld. Authorized Representative for Assessee, Ms. Aarti Vissanji, has placed on record copy of Tax Audit Report to submit that aforesaid payment was made by the assessee on 22/11/2013 which is well before the due date of filing of return of income and therefore, the disallowance was not justified. Upon perusal, we find force in the same. Since the relevant documentary evidences has been placed on record before us, we are inclined to delete the impugned addition in terms of decision of Hon'ble Bombay High Court rendered in **CIT V/s Ghatge Patil Transport Co. [2014 368 ITR 749]**. This ground of appeal stands allowed.

3.3 Disallowance u/s 43B on account of provision for excise duty

During assessment proceedings, it transpired that the assessee made a provision of excise duty for Rs.325.98 Lacs. The Ld. AO worked out



disallowance of Rs.102.69 Lacs u/s 43B since the said amount was paid after 30/11/2014 i.e. after extended due date of filing of return of income. The same, upon confirmation by Ld. first appellate authority, is under appeal before us. The Ld. AR has placed on record additional evidences in the shape of Statement showing working of provision of excise duty on closing stock and xerox copy of monthly excise returns to submit that the amount was well paid / adjusted before the due date of filing of return of income and therefore the claim was allowable. The Ld. DR submitted that this claim may be got verified by Ld. AO. In view of the same, this matter stands remitted back to the file of Ld. AO for appreciation of additional evidences being submitted by the assessee before us. The assessee is directed to substantiate his claim, in this regard. This ground stands allowed for statistical purposes.

4. In result, the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 09.08.2019

Sd/- (Mahavir Singh)	Sd/- (Manoj Kumar Aggarwal)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09.08.2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File