

IN THE INCOME TAX APPELLATE TRIBUNAL "A"

(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI P.M. JAGTAP, V.P & SHRI S. S. GODARA, JM

आयकर अपीलसं./I.T.A No.168/Kol/2020

(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Bengal Beverages Pvt. Ltd. 6, Alipore Park Road, Alipore, Kolkata-700027.	Vs.	DCIT, Circle-11(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCB5984E		
(Appellant)	..	(Respondent)

Appellant by : Shri S. K. Tulsian, Advocate

Respondent by : Shri Dhrubajyoti Ray, JCIT

सुनवाईकीतारीख/ Date of Hearing : 04/08/2020

घोषणाकीतारीख/Date of Pronouncement : 19/08/2020

आदेश / ORDER

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2018-19 arises against the Commissioner of Income Tax (A) - 4, Kolkata's order dated 03.12.2019 passed in Case No.101/CIT(A)-4/19-20 involving proceedings u/s 143(1) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the assessee's sole substantive grievance seeks to reverse both the lower authorities' action disallowing its LIC Group Gratuity scheme deduction claim amounting to Rs.91,12,045/- in section 143(1) intimation as affirmed in the CIT(A)'s lower appellate order passed ex parte.

3. With the able assistance of both the learned representatives and after giving our thoughtful consideration to the case file, we see no reason to sustain the impugned disallowance. It is made clear that since the impugned disallowance has

emanated from section 143(1) intimation and the CIT(A) has passed his order under challenge ex parte without dealing with the merits of the foregoing sole issue, we ourselves deem it appropriate to narrate the basic facts relevant to this sole issue hereinbelow.

4. This assessee is a company manufacturing and trading in aerated water, fruit based beverages and generates wind power. It had filed its return on 29.09.2018 declaring income of Rs.40,59,52,390/-. A perusal of its Part A at Point 9(c) suggests that the assessee had suo moto disallowed a sum of Rs.1,08,01,046/- under section 40A(7) of the Act being in the nature of provision only. This followed its LIC Group Gratuity deduction claim of Rs.91,12,045/- as admissible since actually paid. The said corporation admittedly had issued the corresponding advice dated 05.07.2018 requiring payment of this sum. The assessee suo moto disallowed the net of the foregoing two sums i.e. Rs.16,89,001/- (Rs.1,08,01,046/- - Rs.91,12,045/-) in its computation. Suffice to say, the impugned intimation has rather disallowed the assessee's actually paid gratuity sum over and above the net figure and in addition to the suo moto figure of Rs.1,08,01,046/- in this manner. We quote section 43B(b) in these facts and circumstances to conclude that both the learned lower authorities have erred in law and on facts in disallowing assessee's actually paid sum for its employees gratuity scheme. We therefore direct the Assessing Officer to delete the same.

5. This assessee's appeal is allowed.

Order is pronounced in the open court on 19.08.2020.

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

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 19/08/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- M/s. Bengal Beverages Pvt. Ltd.
2. The Respondent- DCIT, Circle-11(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.