

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

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

ITA No.1292/Bang/2018
Assessment Year: 2013-14

Ocwen Financial Solutions Pvt. Ltd. 6 th Floor of Wing A & 5 th Floor of Wing B, Block No.12, Pritech Park Survey No.51-64/4, Bellandur Village Sarjapur Marathahalli Outer Ring Road Bangalore, Karnataka 560 103 PAN NO : AAACO3764E	Vs.	Deputy Commissioner of Income-tax Circle-5(1)(2)
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, A.R.
Respondent by	:	Smt. R. Premi, D.R.

Date of Hearing	:	04.11.2020
Date of Pronouncement	:	06.11.2020

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 01/02/2018 passed by Ld. CIT(A)-V, Bengaluru and it relates to the assessment year 2013-14.

2. At the time of hearing, the Ld. A.R. did not press ground No.1. Accordingly, the same is dismissed as not pressed. Remaining grounds give rise to following issues.

- a) Disallowance of provision for retention bonus.
- b) Addition of interest income.

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3. The assessee is engaged in the business of providing IT enabled services in the form of back office operations in the area of loan servicing.

4. The first issue relates to disallowance of provision for retention bonus. The A.O. noticed that the assessee has claimed a sum of Rs.1,14,18,059/- as expenditure towards Provision for retention bonus. The assessee explained that it relates to retention bonus payable to its employees who have already rendered services for the year under consideration. The A.O. took the view that the provision so created is an unascertained liability and further the assessee has not paid the retention bonus before the due date for filing the return of income. Accordingly, he disallowed the above said claim of Rs.1,14,18,059/-.

5. Before Ld. CIT(A), the assessee explained that the retention bonus scheme has been devised by the assessee as part of its H.R. strategy in order to retain the talent force. The amount payable to the employees as on 31.3.2013 has been provided for in the books of accounts as per mercantile system of accounting. It was submitted that, if any of the employees resigns prior to the receipt of bonus, the relevant retention bonus shall be reversed and offered to tax. The assessee also relied on the decision rendered in the case of Tavant Technologies India Pvt. Ltd. in order to submit that the provision made towards accrued bonus cannot be treated as uncertain. The assessee further submitted that the provisions of section 43B of the Act shall apply only to the statutory liability and not to the retention bonus.

6. The Ld. CIT(A), by placing reliance on the decision rendered by Hon'ble Supreme Court in the case Bharat Earth Movers, held that

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the provision made for retention bonus is an ascertained liability and is allowable claim. He further held that the retention bonus shall fall under the purview of section 43B of the Act. The Ld. CIT(A) noticed that the assessee has moved an application u/s 154 of the Income-tax Act, 1961 [the Act' for short] before the A.O. requesting him to restrict the disallowance to Rs.97,05,992/-, being the amount not paid before the due date for filing return of income. Accordingly, the Ld. CIT(A) directed the A.O. to restrict the disallowance to Rs.97,05,992/-.

7. The Ld. A.R. contended that the provision for retention bonus is allowable as deduction u/s 37(1) of the Act. He further submitted that the Ld. CIT(A) was not justified in applying the provisions of section 43B of the Act to this claim of the assessee. On the contrary, the Ld. D.R. submitted that the provision for bonus is covered by the provisions of section 43B of the Act and hence the Ld. CIT(A) was justified in directing the A.O. to restrict the disallowance to Rs.97,05,992/-.

8. We heard the parties on this issue and perused the record. A perusal of provision of section 43B of the Act would show that clause (c) relates to the sum referred to in 36(1)(ii) of the Act, which in turn relates to any sum paid to an employee as bonus or commission for services rendered. Admittedly in the instant case, provision for retention bonus is payable to an employee for services rendered by him during the year under consideration. Hence, the retention bonus is allowable as deduction u/s 36(1)(ii) of the Act only and not u/s 37(1) as contended by Ld A.R. Further the provisions of section 43B of the Act would also apply to the Provision for retention bonus. As per the provisions of section 43B of the Act, the provision for retention bonus is not allowable as deduction. However, as per the

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proviso to sec.43B, the amount paid before the due date for filing return of income out of the provision so created is allowable as deduction. Admittedly, the assessee has paid a sum of Rs.17,12,067/-, out of the provision so created, before the due date for filing return of income. Accordingly, we are of the view that the Ld. CIT(A) was justified in directing the A.O. to restrict the disallowance to Rs.97,05,992/-, being the amount not paid before the due date for filing return of income out of provision for retention bonus claimed by the assessee. Accordingly, we uphold the order of Ld. CIT(A) on this issue.

9. The next issue relates to addition of interest income of Rs.67,942/- on the ground that the same is not offered to tax by the assessee, even though it is reflected in form 26 AS and the TDS relating to the same was claimed.

10. We heard the parties on this issue and perused the record. We notice that the Ld. CIT(A) has not disposed of this ground in his order. Nevertheless the Ld. A.R. submitted that the interest income was received from M/s. Tata Power Company Ltd., which was adjusted against electricity bills raised by the above said company. Since the assessee had accounted for net amount of electricity bills, the interest income was not separately disclosed in the profit & loss account. Accordingly, the Ld. A.R. submitted that the impugned interest income has actually been offered by the assessee by way of reduction in the electricity bill.

11. We heard the Ld. D.R. on this issue. Since the submissions made by Ld. A.R. require verification of facts, we restore this issue to the file of A.O. for examining it afresh.

12. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 6th Nov, 2020

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 6th Nov, 2020.
VG/SPS

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.