

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. No. 2751/Del/2018
(Assessment Year: 2013-14)

DCIT, Circle : 22 (1) New Delhi.	Vs.	M/s. Samtel Color Ltd., 501 – Copia Corporate Suits, District Centre Jasola, New Delhi – 110 025. PAN: AAACS6589D
(Appellant)		(Respondent)

Assessee by :	None;
Department by :	Shri Rajesh Kumar, Sr. D. R.;
Date of Hearing :	17/08/2021
Date of pronouncement :	17/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Revenue against the order dated 15.12.2017 passed by the ld. Commissioner of Income Tax (Appeals)-28, New Delhi, for assessment year 2013-14 raising the following grounds of appeal:-

“ 1. Whether the Ld. CIT(A) was justified in deleting the addition of Rs.49,40,172/- made by the AO on account of depreciation on deflection yoke division, particularly when the matter is sub-judiced before the Hon'ble Delhi High on the departments' appeals against the order of the Hon'ble ITAT for the AY 2003-04 AY 2006-07 & 2008-09”.

2. Whether the Ld. CIT (A) was justified in deleting the addition of Rs.91,98,667/- in aggregate (Rs.25,22,093/-, Rs.51,66,918/- EPF and Rs.15,09,656/- ESI) made by the AO on account of late deposit of ESI & PF in contravention of section 2(24)(x) read with section 36(1) (va) of the Income Tax Act, 1961. The Ld. CIT(A) deleted the said addition despite the fact that there is CBDT's circular No. 22/2015 dt. 17.12.2015 and Hon'ble Gujrat High Court's decision in the case of CIT-II Vs. Gujrat state Road Transport Corporation wherein it is held that the deduction with respect to employee PF/ESI contribution is available if paid on or before the due date as mentioned to section 36(1) (va) of the Income Tax Act, 1961.

3. Whether the Ld. CIT(A) was justified in deleting the addition of Rs.2,74,71,818/- made by the AO u/s 14A read with Rule 8D of the Income Tax Rules, 1962 despite the fact that there is specific provisions available in circular No. 5/2014 of the CBDT which provides for disallowance if expenditure even where taxpayers in particular year has not earned any exempt income.
4. The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal. ”
2. The time of hearing of the appellant has come over notice that the above respondent company has already been referred or liquidation by the order of the liquidation passed by the principal bench Of National Company Law Tribunal u/s 33 (2) of the IBC 2016 on 4/7/2018 in CPNo [IB]/132 (PB)/2017. Even otherwise prior to the filing of the appeal by the learned assessing officer it was known to the learned assessing officer that the assessee is going through a liquidation process/resolution process Under IBC 2016. Despite the above fact the assessee was made as a respondent instead of IRP then or official liquidator now. Even otherwise the appeal filed by the learned assessing officer is late by 39 days. Though the learned assessing officer has moved the application for condonation of delay by letter dated 19/4/2018, but because of the reason that the respondent assessee has already been Under liquidation, the appeal should have been filed by making the official liquidator as a respondent. In view of this the appeal of the learned assessing officer is deserves to be dismissed on this count.
3. Accordingly we dismiss the appeal of the learned assessing officer for the reasons stated above without direction / liberty to the learned assessing officer that if the AO wants to pursue the above appeal, the respondent should be the official liquidator appointed by the national company law tribunal.
4. Accordingly appeal of the learned assessing officer is dismissed.

Order pronounced in the open court on : 17/08/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 17/08/2021.

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	17.08.2021
Date on which the typed draft is placed before the dictating member	17.08.2021
Date on which the typed draft is placed before the other member	17.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	17.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	17.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	17.08.2021
Date on which the final order is uploaded on the website of ITAT	17.08.2021
date on which the file goes to the Bench Clerk	17.08.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	