

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(C)', KOLKATA

[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE PRESIDENT (KZ) &
SHRI A. T. VARKEY, HON'BLE JUDICIAL MEMBER]

[Through Virtual Court]

I.T.A. No. 2268/Kol/2019
Assessment Year: 2011-12

A.C. Paul Agricultural Co. Pvt. Ltd.....Appellant
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata - 700 069.
[PAN: AACCA 5650 M]

Vs

DCIT, Circle - 1, Siliguri.....Respondent

Appearances by:

Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.

Shri Supriyo Pal, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : August 31, 2021

Date of pronouncing the order : September 08, 2021

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of the Ld. CIT(A), Siliguri dated 06.8.2019.

2. The relevant facts of the case giving rise to this appeal are that the assessee is a company which is engaged in the business of growing, manufacturing & selling tea. The return of income for the year under consideration was filed by the assessee on 28.11.2011 declaring a total income of Rs. 1,62,16,748/-. The said return was selected for scrutiny under CASS and in the assessment completed u/s 143(3) vide an order dated 25.02.2014, the total income of the

assessee was determined by the AO at Rs. 2,04,49,158/- after making addition on account of disallowance out of certain expenses amounting to Rs. 6,33,102/- and income from other sources amounting to Rs. 36,44,740/-.

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) on the following grounds:

"i. For that the Ld. AO had committed a mistake in considering the business income at Rs. 1,61,71,230/- instead of Rs. 1,25,72,008/-. The business income so considered was including the income from other sources of Rs. 36,44,740/- as per return of the appellant. The Ld. AO had also considered the income from other sources of Rs. 36,44,740/- separately resulting consideration of the same income twice. The mistake so committed should have been rectified as the same was apparent from record.

ii. For that the Ld. AO had committed a mistake in considering the income from other sources of Rs. 36,44,740/- as the business income and further in considering the same as income from other sources resulting a double addition. The mistake so committed should have been rectified as the same was apparent from record.

iii. For that the Ld. AO had committed a mistake in allowing credit of Rs. 52,00,000/- only towards advance tax instead of Rs. 55,00,000/- as per tax statement in Form 26AS and return of the appellant. The mistake was apparent from record and the Ld. AO should have rectified the said mistake.

iv. For that as per Rule 8 of the Income Tax Rules, 1962, the appellant being manufacturer of tea, having its own tea garden is liable to pay tax only on 40% of its mixed income. The Ld. AO had considered 100% mixed income of Rs. 6,33,102/- instead of considering 40% thereof. As the mistake was apparent from record, the Ld. AO should have rectified the said mistake u/s 154 of the I.T. Act, 1962.

v. For that the Ld. AO had committed a mistake in considering the dividend distributed tax of Rs. 7,94,480/- as personal income tax of the

appellant and disallowing the same as business expenditure.”

“

4. The Ld. CIT(A) did not find merit in the grounds raised by the assessee in the appeal and dismissed the said appeal vide paragraph no. 3 of his impugned order which reads as under:

“I have perused the grounds of appeal, statement of facts and assessment order on this issue. On merit, it is seen that the Ld. AO has disallowed an amount of Rs. 6,33,102/- (5% of Rs. 1,26,62,040/-) on account of expenditure claimed by the appellant. There was no satisfactory explanation given by the appellant during assessment proceedings and also during appellate proceedings. Hence, the ground of appeal furnished by the appellant does not have any merit. Accordingly, the addition of Rs. 6,33,102/- made by the AO is confirmed and the appeal is dismissed.”

5. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal on the following grounds:

“i. For that the Ld. CIT(A) ought to have directed the AO to delete the addition of Rs. 36,44,740/- which was added twice by the AO by wrongly including under the head “Income from business” and also separately under the head “Income from other sources”.

ii. For that the Ld. CIT(A) ought to have directed the AO to allow full credit of advance tax of Rs. 55,00,000/- in place of Rs. 52,00,000/- only.

iii. For that the Ld. CIT(A) ought to have granted benefit of exclusion of 60% of the added amount of Rs. 6,33,102/- in respect of labour expenses and in filling expenses as per Rule 8 of the Income Tax Rules, 1962.

iv. (a) For that the Ld. CIT(A) ought to have directed the AO to allow credit for dividend distribution tax of Rs. 7,94,480/-.

(b) For that the Ld. CIT(A) ought to have directed the AO to allow dividend distribution tax as business expenditure.”

6. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards the issue raised in the Ground No. 1, the learned counsel for the assessee has submitted that the total income of Rs. 1,62,16,748/- declared by

the assessee company in its return of income was inclusive of the income from other sources amounting to Rs. 36,44,740/- and the separate addition of the income from other sources as made by the AO in the assessment completed u/s 143(3) has resulted into double addition. The ld. DR, on the other hand, has submitted that this claim made by the assessee relating to the double addition requires verification by the AO. Since the ld. counsel for the assessee has no objection for giving the AO an opportunity for such verification, we restore this issue to the file of the AO with the direction to verify the claim of the assessee of having included the income from other sources amounting to Rs. 36,44,740/- already in the income declared in the return and to allow appropriate relief to the assessee on such verification. Ground no. 1 is accordingly treated as allowed for statistical purpose.

7. As regards ground no. 2, the ld. representatives of both the sides have submitted that the issue involved therein relates to the claim of the assessee for credit on account of advance tax amounting to Rs. 55,00,000/- in place of Rs. 52,00,000/- allowed by the AO also requires verification in order to ascertain the exact amount of advance tax paid by the assessee. We accordingly restore this issue also to the file of the AO to verify the exact amount of advance tax paid by the assessee for the year under consideration and to allow credit to the assessee accordingly. Ground no. 2 is treated as allowed for statistical purpose.

8. As regards the issue involved in ground no. 3, the ld. counsel for the assessee has submitted that the income earned by the assessee

from growing, manufacturing & selling of tea for the year under consideration was Rs. 1,03,65,409/- out of which agricultural income as per Rule 8 of I.T. Rules, 1962 was taken as 60% and the balance income of 40% amounting to Rs. 41,46,164/- was included in the business income. He has contended that since the disallowance of Rs. 6,33,102/- made by the AO out of labour expenses and filling expenses was related to the mixed income earned by the assessee from growing, manufacturing and selling of tea, the same was required to be restricted by him to 40% being related to income actually taxable in the hands of the assessee company. He has contended the balance 60% was related to the exempt agricultural income for which the disallowance was not warranted. The ld. DR, on the other hand, has contended that this claim of the assessee that the entire expenses on account of labour and filling were related to the mixed income from growing, manufacturing and selling of tea also requires verification by the AO and the matter may be sent back to the AO for such verification. Since the ld. counsel for the assessee has also not raised any objection in this regard, we restore this issue to the file of the AO for verifying the claim of the assessee with the direction that the disallowance of labour expenses and filling expenses to the extent found to be related to mixed income earned by the assessee company from growing, manufacturing & selling of tea, the same should be restricted to 40%. Ground no. 3 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

9. Ground no. 4 raised by the assessee in this appeal has not been pressed by the ld. counsel for the assessee at the time of hearing

before us. The same is accordingly dismissed as not pressed.

10. In the result, the appeal of the assessee is treated as partly allowed for statistical purpose.

Order Pronounced in the Open Court on 8th September, 2021.

Sd/-
(A.T. VARKEY)
JUDICIAL MEMBER

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

Dated: 08/09/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. A.C. Paul Agricultural Co. Pvt. Ltd., C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2nd Floor, Kolkata – 700 069.
2. DCIT, Circle – 1, Siliguri.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary / DDO
ITAT, Kolkata Benches Kolkata