

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
(Virtual Court Hearing) BENCH KOLKATA

**Before Shri P. M. Jagtap, Vice-President and
Shri Partha Sarathi Choudhury, Judicial Member**

I.T.A. Nos.345,346&347/Kol/2021
Assessment Years: 2013-14, 2014-15 & 2017-18

Shree Baidyanath Ayurved Bhawan Private Ltd.....Appellant
1, Gupta Lane,
Kolkata-700006.
[PAN:AAECS5408D]

vs.

ACIT, Circle-12(2), Kolkata.....Respondent

Appearances by:

Shri S. M. Surana, Advocate, appeared on behalf of the appellant.

Shri Rajat Datta, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : November 15, 2021

Date of pronouncing the order : November 17, 2021

ORDER

Shri Partha Sarathi Choudhury, Judicial Member:

These appeals preferred by the assessee emanates from the order of Ld. CIT(A), National Faceless Appeal Centre passed u/s 250 dated 27.08.21, 27.08.21 & 28.08.21 for assessment year 2013-14, 2014-15 & 2017-18 as per the grounds of appeal on record.

2. Both the parties agreed that the facts and circumstances and the issues are absolutely identical and similar in all these appeals and therefore these cases were heard together and disposed of vide this consolidated order. First, we would take ITA No.345/Kol/2021 for the assessment year 2013-14 as lead case for adjudication.

ITA No.345/Kol/2021 A.Y 2013-14

3. The grounds of appeal are as follows:

"1. For that the Ld CIT(A) erred in confirming the sum of Rs. 2606367/- being scholar expenses incurred for the purposes of business when the same was duly allowed by the ITAT in earlier years.

2. For that the Ld. CIT A) erred in confirming the order of the Ld AO in disallowing the payments of employees contribution by applying the provisions of sec 36(1)(va) when the payment was admittedly made within the time allowed u/s 43B and the amendment was not retrospective in nature.

3. For that the CIT(A) erred in disallowing the payments made for monthly charges to the clubs which was incurred for business purpose and was allowable as such.

4. For that the Ld CIT(A) erred in confirming the disallowance of the interest receipt when the income as per Form no. 26AS was duly declared as income in the accounts.”

4. With regard to first ground, the Ld. counsel for the assessee submitted that in the first preceding assessment year 2012-13 in assessee’s own case in ITA No.1871/Kol/2016 dated 20.04.2018, the Tribunal has dealt with the same issue and has decided the matter in favour of the assessee. In that year, the Ld. CIT(A) has given relief to the assessee on this issue relying on the assessee’s own case for assessment year 2011-12. Thereafter, the Revenue had preferred an appeal before the Tribunal and it was held as follows:

“6. We have heard the rival contentions of both sides and perused the materials available on record. At the outset, we find that Co-ordinate Bench of this Tribunal in assessee's own case in ITA No.1146/Kol/2015 (supra) having identical facts & circumstances has decided the impugned issue in favour of assessee and against the Revenue. The relevant extract of this order is reproduced below:-

"2.4 We have heard the rival submission.ss we find that the issue under dispute is squarely covered in favour of the assessee in its own case by the order of this Tribunal for the Asst Year 2010-11 in ITA No.90/Kol/2015 dated 23.8.2017 wherein it was held as under:-

'2. After hearing the rival contentions we find that the Tribunal in assessee's own case in I.T.A No.1314/Kol/2014 for AY 2009-10 order dated 23.02.2017 had considered the very same issue in the earlier assessment year at para 4.3 held as follows:

"4.3 Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by Ld. AR for the assessee are supported by the judgment cited by him and facts narrated by him above. As Ld. AR for the assessee has pointed out that after completion of the higher study they joined the company and served the company therefore the expenditure is for the purpose of business. Hence, considering the factual position, we are of the view that the order passed by the Ld. CIT(A) is a reasoned order and does not require interference. Therefore, we confirm the order of Ld. CIT(A)."

Respectfully following the aforesaid decision of this Tribunal in assessee's own case, we find no justifiable reason to interfere with the ITA No.1871/Kol/2016 A.Y. 2012-13 ACIT, Cir-12(2), Kol. Vs. M/s Shree Baidyanath Ayurved Bhawan, Pvt. Ltd. Page 5 order of the ld. CIT(A) in this regard. Accordingly, the grounds raised by the revenue are dismissed."

We respectfully following the consistent view of the Tribunal decline to interfere with the order passed by the Ld. CIT(A) on this account and accordingly the ground taken by the Revenue is regretted. Hence the ground of Revenue's appeal is dismissed."

5. The crux of the finding of the Tribunal was that as per the facts **“that after the completion of the higher study they joined the company and served the company therefore the expenditure is for the purpose of business”**. Respectfully following the aforesaid decision of the Tribunal in assessee’s own case, we do not find any justifiable reason to deviate from the view already taken since the facts and circumstances are identical and similar. In view thereof, this ground is allowed.

6. The next ground is with regard to the disallowance of the payment of employees contribution by applying the provisions of section 36(1)(va).

7. The Ld. AR of the assessee appraised the Bench that this issue was adjudicated upon by the Tribunal in ITA No.186/Kol/2021 in the case of Harendra Nath Biswas vs. DCIT this issue was discussed and decided in favour of the assessee by the Tribunal vide order dated 16.07.2021, the Tribunal had held by as follows:

"4. We have heard both the parties and perused the record. First of all we do not countenance this action of the Ld. CIT(A) for the simple reason that the Explanation 5 was inserted by the Finance Act, 2021, with effect from 01.04.2021 and relevant assessment year before us is AY 2019-20. Therefore the law laid down by the Jurisdictional Hon'ble High Court will apply and since this Explanation-5 has not been made retrospectively. So we are inclined to follow the same and we reproduce the order of Hon'ble Calcutta High Court in the case of Vijayshree Ltd. supra wherein the Hon'ble Calcutta High Court has taken note of the Hon'ble Supreme Court decision in CIT vs. Alom Extrusion Ltd. reported in 390 ITR 306. The Hon'ble Calcutta High Court's decision in Vijayshree Ltd. supra is reproduced as under:

"This appeal is at the instance of the Revenue and is directed against an order dated 28th April, 2011 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 1091/Kol/2010 relating to assessment year 2006-07 by which the Tribunal dismissed the appeal preferred by the Revenue against the order of CIT(A).

The only issue involved in this appeal is as to whether the deletion of the addition by the AO on account of Employees 'Contribution to ESI and PF by invoking the provision of Section 36(1)(va) read with Section 2(24)(x) of the Act was correct or not.

It appears that the Tribunal below, in view of the decision of the Supreme Court in the case of [Commissioner of Income Tax vs. Alom Extrusion Ltd.](#), reported in 2009 Vol.390 ITR 306, held that the deletion was justified.

ITA No.186/Kol/2021 Harendra Nath Biswas A.Y. 2019-20 Being dissatisfied, the Revenue has come up with the present appeal.

After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of [Commissioner of Income Tax vs. Alom Extrusion Ltd.](#), we find that the Supreme Court in the aforesaid case has held that the amendment to the second proviso to the Sec 43(B) of the [Income Tax Act](#), as introduced by [Finance Act, 2003](#), was curative in nature and is required to be applied retrospectively with effect from 1st April, 1988.

Such being the position, the deletion of the amount paid by the Employees' Contribution beyond due date was deductible by invoking the aforesaid amended provisions of [Section 43\(B\)](#) of the Act.

We, therefore, find that no substantial question of law is involved in this appeal and consequently, we dismiss this appeal.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities."

In the light of the aforesaid discussion we do not accept the Ld. CIT(A)'s stand denying the claim of assessee since assessee delayed the employees contribution of EPF & ESI fund and as per the binding decision of the Hon'ble High Court in [Vijayshree Ltd. \(supra\) u/s 36\(1\)\(va\)](#) of the Act since assessee had deposited the employees contribution before filing of Return of Income. Therefore, the assessee succeeds and we allow the appeal of the assessee".

8. Respectfully following the aforesaid decision of the Tribunal, we do not find any justifiable reason to deviate from the view already taken since the facts and circumstances are identical and similar. In view thereof, this ground is allowed.

9. The third ground with regard to the disallowance of payment made for monthly charges to the clubs which were incurred for business purpose. The Ld. counsel for the assessee submitted that for A.Y 2006-07 in ITA No.1225/Kol/2013 in assessee's own case, this issue was discussed and decided in favour of the assessee by the Tribunal vide order dated 29.04.2016, the Tribunal had held as follows:

"7. We have heard rival submissions and gone through facts and circumstances of the case. We find that the AO has disallowed the directors club expenses for the reason that the expenses are purely for personal use of the directors. Ld. AR submitted that the expenses had been incurred for entertaining the customers and develop awareness about

company's products. CIT(A) restricted the disallowance to Rs.90,000/- by observing that the expenses on clubs for business promotion cannot be ruled out. We find that CIT(A) has acknowledged that the expenses on clubs for business promotion cannot be ruled out but without any basis he restricted the disallowance to Rs.90,000/-. In earlier years also the expenses were allowed. Hence, we Shree Baidyanath Ayurved Bhawan P. Ltd. AY 2006-07 reverse the order of CIT(A) and delete the addition of Rs.90,000/- as confirmed by CIT(A). This ground of appeal of assessee is allowed.”

10. The facts that is brought out from the aforesaid finding of the Tribunal is that this kind of expenses are business expenses since the venue for creating and developing awareness about the company's products to various customers is the club where the customers are entertained and awareness is created about the company's products generating business and therefore such expenses were for the purposes of the business of the assessee. Respectfully following the afore-stated decision of the Tribunal in assessee's own case and for the fact that the facts and circumstances are absolutely similar, this ground of appeal of the assessee is allowed.

11. Ground No.4 is not pressed by the assessee. After hearing the submission of the Ld. Counsel, Ground No.4 is dismissed as not pressed.

12. In the result, this appeal ITA No.345/Kol/2021 is partly allowed.

ITA No.346/Kol/2021 A.Y 2014-15

13. The grounds of appeal are as follows:

“1. For that the Ld. CIT A) erred in confirming the order of the Ld AO in disallowing the payments of employees contribution by applying the provisions of sec 36(1)(va) when the payment was admittedly made within the time allowed u/s 43B and the amendment was not retrospective in nature.

2. For that the CIT(A) erred in disallowing the payments made for monthly charges to the clubs which was incurred for business purpose and was allowable as such.

3. For that the Ld CIT(A) erred in confirming the disallowance of the payment of VAT to which the provisions of section 43B were not applicable.”

14. Ground No.1 is with regard to the disallowance of the payment of employees contribution by applying the provisions of section 36(1)(va).

15. Having heard both the sides and gone through the relevant material on record, it is found as an admitted position from the rival sides that the facts and circumstances of this ground are mutatis mutandis similar to those for the A.Y. 2013-14 in ITA No.345/Kol/2021. Following the view taken for the A.Y. 2013-14, we allow this ground.

17. Ground No.2 with regard to the disallowance of payment made for monthly charges to the clubs which were incurred for business purpose.

18. Having heard both the sides and gone through the relevant material on record, it is found as an admitted position from the rival sides that the facts and circumstances of this ground are mutatis mutandis similar to those for the A.Y. 2013-14 in ITA No.345/Kol/2021. Following the view taken for the A.Y. 2013-14, we allow this ground.

19. In Ground No.3, the Ld. counsel submitted that this issue may go back to the file of the Assessing Officer for verification purpose. The Ld. DR raised no objection. Having heard the parties herein, this ground is restored to the file of the Assessing Officer for verification and re-adjudication as per law while complying with the principles of the natural justice. Ground No.3 is allowed for statistical purposes.

20. Hence this appeal ITA No.346/Kol/2021 is partly allowed for statistical purposes.

ITA No.347/Kol/2021 A.Y 2017-18

21. The grounds of appeal are as follows:

“1. For that the Ld. CIT A) erred in confirming the order of the Ld AO in disallowing the payments of employees contribution by applying the provisions of sec 36(1)(va) when the payment was admittedly made within the time allowed u/s 43B and the amendment was not retrospective in nature.

2. For that the CIT(A) erred in disallowing the payments made for monthly charges to the clubs which was incurred for business purpose and was allowable as such.”

22. Ground No.1 is with regard to the disallowance of the payment of employees contribution by applying the provisions of section 36(1)(va).

23. Having heard both the sides and gone through the relevant material on record, it is found as an admitted position from the rival sides that the facts and circumstances of this

ground are mutatis mutandis similar to those for the A.Y. 2013-14 in ITA No.345/Kol/2021. Following the view taken for the A.Y. 2013-14, we allow this ground.

24. Ground No.2 with regard to the disallowance of payment made for monthly charges to the clubs which were incurred for business purpose.

25. Having heard both the sides and gone through the relevant material on record, it is found as an admitted position from the rival sides that the facts and circumstances of this ground are mutatis mutandis similar to those for the A.Y. 2013-14 in ITA No.345/Kol/2021. Following the view taken for the A.Y. 2013-14, we allow this ground.

26. Hence this appeal ITA No.347/Kol/2021 stands allowed.

Order is pronounced in the open court on 17.11.2021.

Sd/-
[P. M. Jagtap]
Vice-President

Sd/-
[Partha Sarathi Chaudhury]
Judicial Member

Dated:17.11.2021.

RS

Copy of the order forwarded to:

1. Shree Baidyanath Ayurved Bhawan Private Ltd
2. ACIT, Circle-12(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches