

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.781 & 782/Chny/2020  
निर्धारण वर्ष /Assessment Years: 2017-18 & 2018-19

M/s.Atandra Energy Pvt. Ltd.,  
No.5, Kumar Street,  
Pazhavanthangal,  
Chennai-600 014.

[PAN: AAECM 2284 R]

(अपीलार्थी/Appellant)

v. The Dy. Commissioner of  
Income Tax,  
CPC, Bangalore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N.Arjunraj, CA for  
Mr.S.Sridhar, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 02.03.2022  
घोषणा की तारीख /Date of Pronouncement : 09.03.2022

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

These two appeals filed by the assessee are directed against separate but identical orders of the Commissioner of Income Tax (Appeals)-1, Chennai, both dated 31.08.2020 & 28.08.2020 and pertains to assessment years 2017-18 & 2018-19 respectively. Since, the facts are identical and issues are common, for the sake of convenient, these appeals were heard together and are being disposed off, by this consolidated order.

2. The brief facts of the case extracted from ITA No.781/Chny/2020 for the assessment year 2017-18 are that the assessee filed its return of

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income for the AY 2017-18 declaring 'NIL' total income. The return filed by the assessee has been processed u/s.143(1) of the Act by making certain adjustments including disallowance of delayed remittances of employees' PF & ESI and gratuity paid. The assessee carried the matter before the First Appellate Authority. The Ld.CIT(A), for the reasons stated in his appellate order dated 31.08.2020, deleted the additions made towards disallowance of employees' contribution to PF & ESI. However, sustained the additions made towards disallowance of gratuity on the ground that the assessee did not bring any material on record to justify the deduction claimed towards gratuity. The Ld.CIT(A) had also rejected the claim of the assessee on MAT credit on the ground that no evidence has been furnished in support of taxes paid u/s.115JB of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**3.** The first issue that came up for our consideration from Ground Nos.4 & 5 of assessee's appeal is disallowance of gratuity paid u/s.43B of the Act. The Ld.AR for the assessee submitted that the assessee has claimed deduction towards gratuity payment on actual payment basis, but the Ld.CIT(A) has confirmed the additions made by the AO without appreciating the fact that the assessee has furnished necessary evidences including the ledger extract to prove that deduction claimed towards gratuity expenses is on actual payment basis but not a provision. The Ld.DR, on the other hand, supported the order of the Ld.CIT(A).

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**4.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO while processing the return filed by the assessee u/s.143(1) of the Act, has made additions towards gratuity payment on the ground that the assessee has claimed deduction towards provision for gratuity. The assessee claims that deduction towards gratuity expenses is on payment basis, for which, necessary evidence has been filed before the Ld.CIT(A). We find that the assessee has paid gratuity to employee's through cheque drawn on ICICI Bank and the same has been debited to gratuity expenses account. From the details filed by the assessee, we find that deduction claimed towards gratuity expenses is on actual payment basis, but not on provision made for gratuity expenses. Therefore, we are of the view that the AO as well as the Ld.CIT(A) were erred in disallowing gratuity expenses u/s.43B of the Act. Hence, we direct the AO to delete the additions made towards gratuity expenses.

**5.** The next issue that came up for our consideration from Ground No.10 of assessee's appeal is denial of MAT credit u/s.115JB of the Act. The assessee claimed MAT credit for the AY 2017-18 as it was liable to tax on the book profit and accordingly, paid a sum of Rs.1,92,855/- tax u/s.115JB of the Act. The total income of the assessee under normal provision of the Act was "NIL". Therefore, the assessee has claimed MAT credit towards tax paid u/s.115JB of the Act. The AO denied the MAT credit, because of additions towards gratuity expenses and employees' contribution to PF &

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ESI, the income declared by the assessee turned to be positive and hence, computed tax under normal provision of the Act and denied MAT credit. The assessee contended that since additions made by the AO towards employees' contribution to PF & ESI has been deleted by the Ld.CIT(A) and further MAT credit relates to disallowance of gratuity is consequential and hence suitable directions may be given to AO to verify and allow MAT credit in accordance with law. We find that MAT credit entitlement of the assessee is consequential and hence, we direct the AO to verify the entitlement of the assessee towards credit and allow credit, if any, after computing income as per provisions of Sec.115JB of the Act and also under normal provisions of the Act.

**6.** In the result, the appeal filed by the assessee in ITA No.781/Chny/2020 is allowed for statistical purposes.

**ITA No.782/Chny/2020 for the AY 2018-19:**

**7.** The only issue that came up for our consideration from the assessee's appeal is disallowance of membership fee paid to club u/s.37 of the Act. The assessee has paid membership fee to Cosmopolitan Club, Chennai and apportioned expenses for a period of membership and has claimed a sum of Rs.1,66,667/- as expenditure incurred for the purpose of business of the assessee. The AO has disallowed the membership fee paid to clubs on the basis of Tax Audit Report issued by the Auditor in Form No.3CD, wherein, the Auditor has reported expenses of personal nature to be disallowed. The

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assessee claimed that the adjustment made by the AO towards disallowance of subscription paid to club is not permissible adjustment as provided u/s.143(1) of the Act. The assessee further claimed that subscription fee paid to clubs to become member of the Club, is for the overall business of the assessee and thus, it is in the nature of expenses incurred for the purpose of business and needs to be allowed as deduction.

**8.** The Ld.DR, on the other hand, submitted that adjustment made by the AO towards disallowance of subscription fee paid to club is permissible u/s.143(1)(a)(iv) of the Act, where it has been specified that disallowance of expenditure indicated in the Audit Report, but not taken into account in computing the total income in the return, can be adjusted while processing return of income. The Ld.DR further submitted that expenses claimed by the assessee towards subscription fee paid to club is personal in nature and further, the assessee failed to prove, as to how, subscription fee paid to club, is enhanced the business of the assessee and thus, there is no reason for the assessee to argue that it has been incurred for the purpose of business of the assessee.

**9.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The Ld.AR for the assessee argued that adjustment made by the AO towards disallowance of subscription fee paid to club is not permissible u/s.143(1)(a)(iv) of the Act. We find that as per Clause (iv) of Sec.143(1)(a) of the Act, the AO can make adjustment towards expenditure indicated in the Audit Report, but

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not taken into account in computing the total income in the return. In this case, the Tax Auditor has quantified the expenses, at personal in nature in his Audit Report issued in Form No.3CD. The AO has made adjustment on the basis of qualified report issued by the Tax Auditor. Therefore, we are of the considered view that there is no merit in the arguments taken by the assessee, then the adjustment made by the AO towards disallowance of subscription fee paid to club is not permissible u/s.143(1)(a)(iv) of the Act. As regards, the contention of the assessee that subscription fee paid to club is for overall development of the business and thus, it partakes nature of expenses incurred wholly and exclusively for the purpose of business, we find that unless assessee demonstrate with relevant evidences that subscription fee paid to club, is for the purpose of business of the assessee and said expenditure is aided for overall development of the assessee, it cannot be held that expenses, at personal in nature, is in the nature of business expenditure incurred wholly and exclusively for the purpose of business, since the assessee has not demonstrated with any evidences and proved that subscription fee paid to club is for the purpose of business. Therefore, we are of the considered view that there is no error in the reasons given by the AO to make disallowance towards subscription fee paid to club. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

**10.** In the result, appeal filed by the assessee in ITA No.782/Chny/2020 is dismissed.

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**11.** In the result, the appeal filed by the assessee in ITA No.781/Chny/2020 is allowed for statistical purposes and the appeal filed by the assessee in ITA No.782/Chny/2020 is dismissed.

Order pronounced on the 09<sup>th</sup> day of March, 2022, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09<sup>th</sup> March, 2022.

**TLN**

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF