

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

(Before Sri Rajpal Yadav, Vice President & Sri Manish Borad, Accountant Member)

**I.T.A. No.: 64/Kol/2022
Assessment Year: 2013-14**

**D.R. Steel Construction Co. Pvt. Ltd.....Appellant
[PAN: AAACD 9832 G]**

Vs.

DCIT, Circle-10(1), Kolkata.....Respondent

Appearances by:

*Sh. S.K. Tulsiyan, Adv. &
Mrs. Puja Somani, CA, appeared on behalf of the Assessee.*

Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : March 24th, 2022

Date of pronouncing the order : March 30th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2013-14 is directed against the order of Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC)[in short Id. "CIT(A)"] dated 07.12.2021 vide Appeal No.CIT(A), Kolkata-4/10113/2017-18 which is arising out of the assessment order framed u/s 154 of the Income Tax Act, 1961 (in short the "Act") dated 30.06.2017 by DCIT, Circle-10(1), Kolkata.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in law in having upheld the disallowance/addition of sales-tax liability of Rs. 12,32,290/- claimed in the A.Y. 2013-14 under appeal without considering that the said liability payable was considered and finalized in the scrutiny assessment made u/s 143(3) of the Act and the Ld. A.O. disallowed the same very liability vide subsequent order u/s 154 of the Act on the basis of change of opinion on the same set of facts, VAT returns and accounts.

2. That the Ld. C.I.T.(A) further erred in not having considered that the disallowance of sales-tax liability claimed in the A.Y. 2013-14 was made by the

Ld. A.O. on a change of mind relying on some case laws whereas, on the other hand, the assessee in its defence has cited case law favouring the legitimacy of the claim and that being so, the impugned disallowance being not a mistake apparent from the records rather debatable in nature cannot be made u/s 154 of the Act and the same is, therefore, liable to be deleted.

3. That, without any prejudice to the above, the Ld. A.O. erred in law in having disallowed and added the sales-tax liability of Rs. 12,32,290/- to the total income vide order u/s 154 of the Act dated 30.06.2017 and the Ld. C.I.T.(A) erred in having upheld the said disallowance/ addition in spite of the fact that the said sales-tax liability was debited during the previous year relevant to A.Y. 2013-14 when the demand became final and enforceable after the orders were passed by the Sales-tax Department and audit order dated 17.10.2012.

4. That, the Ld. revenue authorities further erred in not having considered that the taxes paid as per the Sales-tax (VAT) Returns of Rs.5,59,386/- and Rs.6,72,904/- in the relevant F.Ys 2005-06 & 2010-11 respectively, aggregating to Rs. 12,32,290/-, were not debited in those years as admissible expenses under a genuine doubt as to its liability and in no way there was any escapement of income-tax inasmuch as it was just paying of income-tax in earlier years and taking the deduction later.

5. That, the Ld. C.I.T.(A) erred in not entertaining the credit of DDT amounting to Rs.4,79,157/- on the alleged ground that the payment pertained to A.Y. 2014-15 without considering the fact that the credit of DDT of Rs.4,79,157/- admittedly paid on 26.06.2013 for the dividend declared and paid for the A.Y. 2013-14 has not been allowed despite filing a petition u/s 154 against the assessment order u/s 143(3) of the Act for A.Y. 2013-14.

6. That, as the order of Ld. C.I.T.(A) on the above issues suffer from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

7. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. At the outset, ld. Counsel for the assessee requested for no pressing ground no. 5. Ld. D/R did not oppose. We, therefore, dismiss ground no. 5 as not pressed.

4. Ground nos. 1 to 4 have been raised only for the issue of disallowance of sales tax liability of Rs.12,32,290/-.

5. We have heard rival contentions and perused the records placed before us. The facts pertaining to this issue are that during the FY 2012-13 (AY 2013-14) subsequent to completion of sales tax assessment proceedings for AY 2005-06 and AY 2010-11 liability of Rs.5,59,386/- and Rs.6,72,904/- arose for AY 2005-06 and AY 2010-11 respectively. The assessee paid this amount of Rs.12,32,290/- during the FY 2012-13 and claimed it as expenditure. This claim was made in the return of income filed on

20.09.2013 declaring income of Rs.57,98,895/-. Assessee's case was selected for scrutiny and assessment u/s 143(3) of the Act was framed on 01.02.2016. Subsequently, Id. Assessing Officer (in short Id. "AO") issued notice u/s 154 of the Act observing that a mistake apparent on record is found and that the assessee has wrongly claimed the expenditure of sales tax payment of Rs.12,32,290/- and the same is not allowable as this does not pertain to AY 2013-14. Though it was claimed by the assessee that the said expenditure has been claimed as per the provisions of Section 43B of the Act, but the assessee did not get any favour from the Id. AO. Thereafter, the assessee carried the matter to the Id. CIT(A) but could not succeed.

6. We, further observe that the Id. AO has not disputed the fact that the payment of sales tax liability has been made by the assessee during the year under appeal at Rs.12,32,290/- which comprises of the sales tax liability for AY 2005-06 at Rs.5,59,386/- and of Rs.6,72,904/- for AY 2010-11. The assessee has made this claim under the provisions of Section 43B of the Act.

7. Relevant part of Section 43B of the Act reads as under:

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause (ii) of sub-section (1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

[(da) any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or]

(e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances, or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, or

(g) any sum payable by the assessee to the Indian Railways for the use of railway assets,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.”

8. Section 43B of the Act starts with the words ‘*Notwithstanding anything contained in any other provision of this Act*’. Thus, this is an overriding section and anything contained in other provisions of the Income Tax Act are not be applicable to the payments mentioned under this section. Section 43B of the Act states that certain payments should be allowed to be claimed as an expense only in the year in which they have been paid and not in the year in which the liability to pay such sum was incurred. Thus, for the expenses mentioned in this section, accrual/mercantile concept of accounting is not followed and only cash basis of accounting has to be followed.

9. We find that provisions of Section 43B of the Act deals with certain deductions to be allowed on actual payments. Section 43B of the Act deals with various amounts payable in Clause- ‘a’ to ‘g’ of Section 43B of the Act and the alleged tax liability falls under Clause- ‘a’ which states that any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force. As per Section 43B of the Act such sum as mentioned in Clause- ‘a’ of Section 43B of the Act shall be allowed as a deduction only during the previous year in which such sum is actually paid. Irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed. Only exception to this is the payments which have not been paid during a particular financial year but paid before the due date of furnishing the return of income u/s 139(1) of the Act and in

such cases the amount paid can be claimed as expenditure in the income tax return.

10. Now, going through the facts of the case, we find that the year under appeal is AY 2013-14. The alleged amount pertains to AY 2005-06 and AY 2010-11 and such liability did not exist at that point of time and, therefore, there was no possibility to make the payment during the relevant assessment year or before the due date of filing of return of income for such assessment year. The fact is that the liability of sales tax payment of Rs.12,32,290/- crystallized during the AY 2013-14 post sales tax assessment completion/sales tax proceedings. The assessee made the payment during the year which is not in dispute. Therefore, in our considered view provisions of Section 43B of the Act are squarely applicable on the alleged sum and the assessee as rightly claimed it as deduction against income for AY 2013-14. We, therefore, under the given facts and circumstances, find that the Id. CIT(A) erred in sustaining the disallowance made by the AO, as the alleged sum of Rs.12,32,290/- is eligible as a deduction against the income for AY 2013-14 as per provisions of Section 43B of the Act. The addition so made by the AO stands deleted and ground nos. 1 to 4 raised by the assessee in the instant appeal are allowed.

11. Ground nos. 6 & 7 are general in nature which need no adjudication.

12. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 30th March, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 30.03.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **D.R. Steel Construction Co. Pvt. Ltd., Sagar Estate, 3rd Floor, Suite No. 6, 2, N.C. Dutta Sarani, Kolkata-700 001.**
2. **DCIT, Circle-10(1), Kolkata.**
3. CIT(A)- National Faceless Appeal Centre (NFAC).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata