

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीयश्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीयश्री अनिकेश बनर्जी, न्यायिक सदस्यके समक्ष।

BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI ANIKESH BANERJEE, JM

आयकर अपील सं./ **ITA No. 242/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2014-15**)

M/s. Tanfac Industries Limited No.66, Oxford Centre, 1 st Floor C.P.Ramaswamy Road, Alwarpet Chennai – 600 018	बनाम/ Vs.	ACIT Corporate Circle-3(1) 121, MG Road, Nungambakkam Chennai – 34.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AAAC-2591-A		
(आपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

आपीलार्थीकी ओरसे/ Appellant by	:	Shri Arun Karthik Mohan (Advocate) & Shri Ashwini Vaidialingam (Advocate) – Ld. ARs
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P Sajit Kumar (JCIT) – Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	17-03-2022
घोषणाकी तारीख / Date of Pronouncement	:	04-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-7, Chennai [CIT(A)] dated 16-11-2018 in the matter of

assessment framed by Ld. Assessing Officer [AO] 143(3) of the Act on 24-11-2016. The grounds raised by the assessee read as under: -

1. The Ld. Commissioner has not considered the case of the Appellant.
 2. The impugned order has been passed without appreciating the facts of the case and the grounds of appeal filed before the Ld. Commissioner.
 3. The grounds of appeal filed before the Ld. Commissioner specifically states that the excess provisions made towards excise duty and cess had already been reversed in the Profit and Loss Account and this fact had further been endorsed in the tax audit report. The disallowance by the Assessing Officer had therefore resulted in disallowing the same amount twice. Although these pleadings have been set out in the impugned order, the same have not been considered.
 4. The grounds of appeal filed before the Ld. Commissioner further stated that in view of the judgment of the Hon'ble Supreme Court in Bharat Earth Movers vs CIT, 245 ITR 428, a claim for deduction on account of provision for leave salary, based on the method of actuarial variation, would have to be allowed. Although these pleadings have been set out in the impugned order, the same have not been considered.
 5. Without prejudice to the above, the grounds of appeal filed before the Ld. Commissioner specifically states that a sum of Rs.10,62,588 was in fact paid by the appellant during the AY 2014-15 towards leave encashment and that the same would become evident from a reading of Annexure K9 to the tax audit report. In view thereof, even assuming without admitting that disallowance was to be made under Section 43B of the Income Tax Act, the Assessing Officer ought to have taken only the net amount of Rs.11,32,436/- Although these pleadings have been set out in the impugned order, the same have not been considered.
 6. The Ld. Commissioner failed to grant an opportunity of hearing to the Appellant.
 7. The Ld. Commissioner has otherwise caused grave injustice to the Appellant by denying an opportunity to the Appellant to explain its case.
 8. On the scheduled date of hearing, the authorized representative of the Appellant had a marriage in the family and hence was not in a position to attend to the hearing. A letter requesting for adjournment of the hearing on the said account was also prepared for filing before the Commissioner of Income Tax (Appeals) - 7, however the same was inadvertently and by oversight not filed.
- For the above reasons, it is prayed that this Hon'ble Tribunal may be pleased to quash and set aside the order dated 16.11.2018 passed by the learned Commissioner of Income Tax, Appeals-7, and pass such further order and/or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case and thus render justice.

As aggrieved, the assessee is aggrieved by confirmation of certain disallowances u/s 43B.

2. Having heard rival submissions and after due consideration of relevant material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. Disallowance of Excess Deduction

3.1 The assessee claimed deduction u/s 43B for Rs.4.15 Lacs since the same was disallowed in earlier years. The Ld. AO held that the assessee paid only an amount of Rs.2.19 Lacs and therefore, the assessee claimed excess deduction of Rs.1.95 Lacs. The same was disallowed and added back to the income of the assessee.

3.2 During appellate proceedings, it was submitted by the assessee that this amount represents excess provisions reversed in the account. Adding the same to the income of the assessee would result into disallowing the amount twice. However, disregarding the same, Ld. CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

3.3 Upon perusal of assessee's computation of income, it could be seen that the assessee has claimed deduction u/s 43B for Rs.4,15,001/-. As per Annexure-J of Tax Audit Report, this amount represents liability of excise duty, cess and staff bonus pertaining to AY 2013-14. Since the same was outstanding, the deduction of the same was not allowed in AY 2013-14. In this year, the assessee has paid an amount of Rs.2,19,474/- on 08.10.2013 whereas the remaining amount of Rs.1,95,527/- has been written-back in the books of accounts. Accordingly, Ld. AO has disallowed Rs.1,95,527/- on the ground that the same has not been paid by the assessee. It is the submissions of Ld. AR that the amount of Rs.1,95,527/- has been reversed in the books of accounts and disallowing the same again would amount to double taxation. Finding strength in the same, we direct Ld. AO to verify the same and if this amount has already been reversed in the books of accounts, the deduction of the same would be available since disallowing the same

would amount to double taxation. This ground stand allowed for statistical purposes.

4. Disallowance of Deduction u/s 43B

4.1 As per Audit Report, the assessee claimed deduction of Rs.21.95 Lacs which represent for provision for leave encashment. The same sum was not paid during the year and accordingly, the provisions of Sec.43B were held applicable to these payments. Consequently, the same was disallowed and added back to the income of the assessee.

4.2 During appellate proceedings, the assessee pleaded that Ld. AO disallowed entire amount without considering amount of Rs.10.62 Lacs as paid by the assessee during the year. The disallowance should have been restricted to Rs.11.32 Lacs. The assessee also pleaded that since the provision was made as per actuarial valuation, entire amount should have been allowed to the assessee. However, disregarding the same, Ld. CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

4.3 During hearing, Ld. AR fairly submitted that the provisions of Sec.43B would apply to leave encashment also. The limited submission of Ld. AR is that an amount of Rs.10.62 Lacs has actually been paid by the assessee out of provision for leave encashment. Therefore, the same would not be hit by the provisions of Sec.43B. Concurring with the same, we direct Ld. AO to verify the same and if the payment has actually been made, the disallowance to that extent would stand deleted. The ground stand allowed for statistical purposes.

5. The appeal stands partly allowed for statistical purposes.

Order pronounced in open Court on 04th May, 2022.

Sd/-
(ANIKESH BANERJEE)
न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 04/05/2022.

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A) 4. आयकरआयुक्त/CIT 5.
विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF