

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C(SMC)", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.252/Kol/2021
Assessment Year: 2014-15**

Sri Balaji Coke Industries 1/1A, Biplabi Anukul Chandra Street, 5 th Floor, Kolkata – 700072. PAN: ABAFS 5400 P	Vs.	DCIT, Circle-40, Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rakesh Dubey, Advocate
Respondent by : Shri Jayanta Khanra, JCIT

Date of Hearing : 06.06.2022

Date of Pronouncement : 09.06.2022

ORDER

PER SONJOY SARMA, JM:

The present appeal has been preferred by the assessee against the order dated 06.04.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That the Order of Ld. CIT(A) is against the law and facts of the case.

2. That in the Facts and in the circumstances of the case and in law, the Ld. CIT(A) has wrongly dismissed the grounds of appeal No. 2 of your assessee which was taken before him wherein your assessee challenged the order of Ld. A.O about addition of Rs.8.95,771/- on account of provision of entry tax. On ground that Ld. A.O has rejected the books of accounts stating that entire transactions were fake & bogus hence amount of Rs. 8.95,771/- is also fake & bogus in account of Sri Balaji Coke Industries.

3. That your assessee had been in appeal before CIT(A)-12/Kolkata who passed the order on 27.02.2019 and deleted the entire additions hence the above addition of Rs. 8.95,771/- is liable to delete on grounds of fake & bogus as made by Ld. A.O in original order.

4. That the addition of Rs. 8,95.771/- is liable to delete on the basis of order as passed by CIT(A)-12/Kolkata on 27.02.2019.

5. That the Appellant craves leave for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of Appeal.”

2. The assessee in the present case is a firm which is engaged in the business of manufacturing of coke. The return of income for the year under consideration was filed by it on 29.11.2014 declaring its total income at Nil. In the assessment originally completed u/s 143(3) vide an order dated 27.12.2016, the total income of the assessee was determined by the Assessing Officer at Rs. 43,13,44,440/-. Thereafter, proceeding u/s 263 was initiated by the Ld. PCIT and order was passed on 20.02.2019. In terms of order passed by Ld. PCIT, the assessment u/s 143(3) r.w.s. 263 was completed by the AO on 25.06.2019. After making an addition of Rs. 8,95,771/- on account of disallowance 'Provision for Entry Tax'. The assessee dissatisfied with the above order and preferred an appeal before the Ld. CIT, National Faceless Appeal Centre which was dismissed on 06.04.2021.

3. Aggrieved by the action of Ld. CIT, National Faceless Appeal Centre, the assessee is in appeal before us.

4. We have heard both the parties and perused the material available on record. The assessee has raised total five grounds in this appeal. Ground no. 2 goes roots of the case and we take this issue first. The assessee challenging the issue about the addition of Rs. 8,95,771/- on account of 'Provision for Entry Tax'

5. At the time of hearing, the Id. AR submitted that the assessee filed a writ petition in Civil no. 3644 of 2017 before the Hon'ble Gauhati High Court at Guwahati which is still pending regarding applicability of entry tax upon the assessee as imposed by the authority and the provision was made by the assessee only to protect its liability by making such provision and to give this effect entry tax was debited to profit and loss account as an expenditure. He further submitted that assessee paid advance entry tax of Rs. 1,44,64,585/- which is shown under other current asset in Schedule E of balance sheet and during the year entry tax of Rs. 8,95,771/- debited into profit and loss account and also shown the said entry tax among other current liability, as because the assessee

already advance payment was made under entry tax and such provision will be adjusted from the advance entry tax after disposal of writ petition.

6. On the other hand, the ld. DR relied on the order of Ld. CIT, National Faceless Appeal Centre.

7. We after going through the material available on record and submission made by the parties it reveals that the assessee had paid advance entry tax to the tune of Rs. 1,44,64,585/- which is shown under the other current asset under Schedule 'E' of balance sheet and during the year entry tax of Rs. 8,95,771/- debited into profit and loss A/c and also shown the said entry tax amount under the current liabilities, as the assessee already advance payment was made under entry tax and such provision will be adjusted from advance entry tax after disposal of writ petition which is still pending before the Hon'ble Gauhati High Court vide (Civil) No. 3644 of 2017 and the assessee had already paid the entry tax in advance, although the said provision was made only for adjustment after the disposal of the writ petition by the Hon'ble Gauhati High Court and accordingly we allowed Rs. 8,95,771/- on account of provision of entry tax made by the assessee since assessee had already paid advance entry tax.

8. However, it is made clear that the provision made by the assessee will be adjusted from the advance payment entry tax after the disposal of the writ petition which is still pending before the Hon'ble Gauhati High Court and consequential tax effects should be taken into consideration in terms of such order passed by the Hon'ble Gauhati High Court.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.06.2022.

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

**Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 09.06.2022
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Sri Balaji Coke Industries.
2. The Respondent: DCIT, CIR-40, Kolkata.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata