

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No. 400/Kol/2021
Assessment Year : 2019-20

Manas Flour Mills Pvt. Ltd. 25B, 'Swaika House', Shakespeare Sarani Kolkata- 700017 PAN : AABCM7148M	Vs	CPC, Bangalore [ITO, Ward-7(1), Kol]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Soumitra Choudhury, Adv.	
Revenue by :	Shri Sailen Samaddar, Addl. CIT, D/R	

सुनवाई की तारीख/Date of Hearing : 26/05/2022
घोषणा की तारीख /Date of Pronouncement : 16/05/2022

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the “1d. First Appellate Authority”], dt. 01/10/2021, passed u/s 250 of the Income Tax Act, 1961 (in short “the Act”) for the Assessment Year 2019-20.

2. Though the assessee has taken seven (7) grounds of appeal, but, its grievances revolve around two issues, namely,

(a) that the 1d. CIT(A) has erred in confirming the order of the Assessing Officer (CPC) whereby an adjustment of Rs.5,51,909/- has made to the total income of the assessee;

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(b) that the 1d. CIT(A) has erred in confirming the charging of interest u/s 234C at Rs.1,70,012/- in place of Rs.1,62,963/-.

3. Brief facts of the case are that the assessee has filed its return of income on 17/10/2019. This return was revised on 06/03/2020 showing total income of Rs.10,24.86,460/-. The Assessing Officer (CPC) had passed an assessment order u/s 143(1) of the Act and disallowed a sum of Rs.5,51,909/-. The breakup of this expenditure has been given by the assessee in the paper book at page no. 8. The details placed by the assessee on record, reflect the payments made to different clubs containing cheque nos., dates and the amounts. A perusal of these details would indicate that the assessee has made payment to the following clubs:-

<u>"Subscription Amount</u>	<u>Club Name</u>
Rs.2,39,200.00	The Saturday Club Ltd.
Rs.2,30,000.00	Calcutta Cricket & Football Club
Rs.50,000.00	Calcutta Cricket & Football Club
Rs.12,000.00	Ladies Study Group
Rs.6,490.00	Madhuwan Together Forever Club
Rs.3,127.00	The Calcutta Swimming Club
<u>Rs.11,092.00</u>	The Calcutta Swimming Club
<u>Rs.5,51,909.00</u>	

3.1. The assessee has contended that as far as the payment of Rs.2,39,200/- to Saturday club and Rs.2,30,000/- to Calcutta Cricket & Football Club are concerned, these were paid in earlier years i.e., paid on 19th July, 2016 and 11/05/2017. These amounts have been amortized for five years. The total payment made to Saturday club was Rs.11,96,000/- towards membership. Similarly, towards Calcutta Cricket & Football Club, Rs.11,50,000/- was paid towards membership. In earlier years 1/5th of these amounts have been allowed to the assessee. Hence, according to the ld. Counsel for the assessee, the Assessing Officer has erred in making an adjustment of this expenditure while processing the return u/s 139(1) of the Act. He further relied upon the

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judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Samtel Color Limited* in ITA No. 1152/2008 judgment dt. 30/01/2009. He placed on record copy of this judgment. On the strength of this judgment, he contended that the expenditure towards subscription of club membership is an allowable expenditure and it cannot be disallowed.

4. On the other hand, the Id. D/R contended that as far as the subscription payment are concerned, these have been amortized by the assessee as depicted at page 8 of the paper book. However, with respect to other expenditures this judgment is not applicable because those expenditure do not pertain to membership fees. From the details of expenditure, it is not discernible as to what is the nature of the expenses and upon whom these were incurred. According to him, it is not ascertainable whether these are business expenditure or otherwise.

5. We have duly considered rival contentions and gone through the record carefully. A perusal of the record would reveal that the addition of Rs.5,51,909/- on account of two major expenditures relate to subscription of club memberships and these expenditures were incurred in the earlier year but amortized for a period of five years. Every year 1/5th was claimed. It was allowed by the Assessing Officer in the earlier year. It is 1/5th in this year also. Therefore, these could not be adjusted. It is further observed that in a *prima facie* adjustment, an item can be adjusted when it is not required to be established by arguments and a long drawn process of reasoning on points on which there may conceivably two opinions. The adjustment said to be made by the Assessing Officer relate to a debatable issue i.e., whether the expenses were incurred for obtaining the membership of the club or otherwise routine expenditure. Whether the expenditure could be termed as incurred for the purpose of business or not and such type of adjustment

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cannot be made u/s 143(1) of the Act. Therefore, this adjustment is set aside and the addition is deleted.

6. As far as charging of interest u/s 234C of the Act is concerned, it is consequential in nature. In view of the above discussion, appeal of the assessee is allowed.

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

Order pronounced in the Court on 16th May, 2022 at Kolkata.

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Kolkata, Dated 16/05/2022

SC SPB

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,Kolkata/DR,ITAT, Kolkata
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata