

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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 201/Ko1/2022

Assessment Year: 1995-96

Central Roller Flour Mills Pvt. Ltd.....Appellant
[PAN: AABCC 8240 N]

Vs.

DCIT, Central Circle-4(4), Kolkata.....Respondent

Appearances by:

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

Sh. Jayanta Khanra, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : June 6th, 2022

Date of pronouncing the order : June 28th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 1995-96 is directed against the order passed u/s 250 r.w.s. 254 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-21, Kolkata [in short Id. "CIT(A)"] dated 11.04.2022 arising out of the assessment order framed u/s 143(3) of the Act dated 31.03.1998.

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

“1. That, on the facts and circumstances of the case, the Ld. A.O. misdirected himself in invoking provisions of sec.43B in order to add the following statutory liabilities to the income of the appellant and the Ld. C.I.T.(A) simultaneously erred in having upheld such arbitrary and unlawful action in spite of the admitted fact that these liabilities did not accrue or paid during the relevant F.Y. and these were merely opening balances carried forward from earlier years and moreover the impugned issue raised in the departmental appeal before the Hon’ble Tribunal was held against the department and in favour of the assessee vide order dated 18.03.2008 (ITA No.104/Pat/2005:

Additional sales-tax Rs.6,22,856/-

Central sales-tax Rs. 292/-

2. That, the Ld. C.I.T.(A) further erred in having upheld the addition of Rs.6,65,369/- on account of State sales-tax liability u/s 43B of the Act by not considering that out of the said liability, the carry forward balance of Rs.5,47,013/- had already been considered in the earlier A.Ys 1992-93 & 1993-94 and during the year out of the realization of Rs.9,76,403/- the assessee had deposited Rs.9,42,195/- before the due date of filing of the ROI u/s 139(1) of the Act and hence the balance liability of Rs.34,208/- remained unpaid during the A.Y. under appeal.

3. That, the Ld. C.I.T.(A) erred in having upheld the addition of Rs.556/- u/s 43B of the Act on account of agricultural tax (marketing fees) in spite of the fact that the same was not a statutory liability and hence not paid into the State Treasury and was merely fees levied by the local bazaar Samity against receipt issued by Krishi Utpadan Bazar Samity.

4a. That, the Ld. C.I.T.(A) further erred in having upheld the disallowance/addition of Rs.2,970/- being employees’ contribution for March, 1995 to EPF/ESI u/s 36(1)(va) r.w.s. 43B of the Act on the alleged ground that the appellant nowhere produced evidence establishing that the contributions were deposited before the due date for filing the ROI when as noted in the impugned order the assessee filed Xerox copy of the challan evidencing deposit made to the Govt, account.

4b. That, the Ld. C.I.T.(A) while upholding the disallowance/addition of Rs.2,970/- for A.Y. 1995-96 has also misinterpreted the amendments in secs.36(1)(va) and 43B of the Act by inserting corresponding Explanations by The Finance Act, 2021 w.e.f.

01/04/2021 as clarificatory in nature and hence retrospective effect in spite of the fact that as decided by the jurisdictional Tribunal in several cases, the said amendments have prospective effect from A.Y. 2021-22 and subsequent years and the legislature itself has condoned the defaults prior to 01/04/2021.

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

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

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company. Return of income for AY 1995-96 filed on 30.11.1995 declaring income of Rs. 43,660/-. Case selected for scrutiny proceedings followed by serving of notices u/s 143(2) & 142(1) of the Act. In the course of assessment proceedings on perusal of the balance sheet as on 31.03.1995 other liabilities were shown at Rs. 12,90,086/-. The assessee was asked to furnish the copies of challans for payment of said liabilities which the assessee failed to do so. Ld. Assessing Officer (in short ld. “AO”) accordingly made the addition u/s 43B of the Act at Rs. 12,90,086/- and assessed the income at Rs. 12,46,430/-

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) but failed to succeed.

5. Now, the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee vehemently argued referring to the written submissions placed on record mainly focusing on the fact that major portion of the alleged addition of other liabilities

Going further, we notice that there was Revenue's appeal against the assessee before this Tribunal for AY 1993-94 (FY 1992-93) in *ITA No. 104/Pat/2005* dated 18.03.2008 a copy of which is placed at page 32 to 37 of the paper book wherein this Tribunal observed that *"We find that out of the total liability on account of additional sales-tax of Rs. 10,22,857/-, payment of Rs. 4 lakhs has already been effected in FY 1990-91 relevant to AY 1991-92 and hence the balance sum of Rs. 6,22,857/- was a brought forward balance on that account appearing in AY 1992-93 which has already been assessed in past years. Therefore, no disallowance called for on this account."*

10. We, therefore, on going through the above finding of this Tribunal and also the balance sheet as on 31.03.1994 find merits in the contention of the ld. Counsel for the assessee. Ld. CIT(A) erred in confirming the addition at Rs. 6,22,856/- for additional sales-tax and central sales-tax at Rs. 292/- u/s 43B of the Act because both these amounts were not on account of liability for the year under appeal and they were brought forward balance of other liabilities from AY 1992-93. Thus, both the additions of Rs. 6,22,856/- & Rs. 292/- are deleted. Ground no. 1 of the assessee is allowed.

11. Now, we take up ground no. 2 pertaining to addition of Rs. 6,63,412/- being part of the total addition of Rs. 12,90,086/- confirmed by ld. CIT(A). On perusal of records, we find that the other liabilities as on 31.03.1994 at Rs. 11,72,779/- (as discussed above in ground no. 1 of this appeal), consists of Bihar sales-tax at Rs. 5,47,013/-. This was the balance as on 31.03.1994. During

FY 1994-95 against the opening balance of Rs. 5,47,013/-, a sum of Rs. 52,047/- was paid during the year, sales-tax realized during the year was Rs. 9,76,402/- and payments made during the current year against the current tax liabilities is Rs. 8,08,000/-. However, against the current year sales tax realization of Rs. 9,76,402/-, Rs. 1,34,195/- is claimed to have been paid before the due date of filing return of income and the proof of the same is placed at page 44 to 53 of the paper book dated 30.05.2022. Thus, against the current year sales tax realization of Rs. 9,76,402/-, only a sum of Rs. 34,207/- remains due to have been paid before the due date of filing the return of income which attracts the provisions of Section 43B of the Act. Out of the alleged addition except the sum of Rs. 34,207/- the balance is either brought forward balance from preceding years which have already been considered in the previous assessment year and remaining already stands paid which do not call for invoking the provisions of Section 43B of the Act on such amount. Therefore, out of impugned addition of Rs. 6,63,412/-, we delete the addition of Rs. 6,29,209/- and confirm the remaining addition of Rs. 34,207/- for unpaid tax liabilities u/s 43B of the Act. Thus, ground no. 2 is partly allowed.

12. Ground no. 3 relates to the addition of Rs. 556/- on account of agricultural tax. As per paper book page 66, we find that the said amount has been paid on 30.04.1995 and this fact remains uncontroverted. We, therefore, delete the addition of Rs. 556/- made u/s 43B of the Act and allow ground no. 3 raised by the assessee.

13. Ground no. 4a & 4b relates to disallowance of employees' contribution towards PF & ESI u/s 36(1)(va) r.w.s. 43B of the Act pertaining to March, 1995. Though there is a delay in deposit by 10 days as it has been paid on 24.04.1995, but both the lower authorities denied the deduction alleging that the same has not been paid as per the due date prescribed in the PF & ESI Act. However, this fact is not in dispute that the alleged amount has been paid before the due date of filing return of income u/s 139(1) of the Act and as per the consistent view taken by Hon'ble Courts and also jurisdictional High Court of Calcutta in the case of *CIT vs. Vijay Shree Ltd.* reported in [2014] 43 taxmann.com 396 (Cal) we find that no disallowance for the said amount was called for. We, therefore, delete the addition of Rs. 2,970/- u/s 43B of the Act and allow ground nos. 4a & 4b of the assessee's appeal.

14. Ground no. 5 is general in nature and has not been specifically argued by ld. Counsel for the assessee and thus, needs no adjudication. Therefore, ground no. 5 is dismissed.

15. Ground no. 6 is general in nature which needs no adjudication.

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

Kolkata, the 28th June, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 28.06.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Central Roller Flour Mills Pvt. Ltd., FMC Fortuna, 5th Floor, Room No. 14A, 234/3A, A.J.C. Bose Road, Kolkata-700 020.**
- 2. DCIT, Central Circle-4(4), Kolkata.**
3. CIT(A)-21, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata