

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.39/KOL/2022
Assessment Year: 2018-2019**

Vishwa Industrial Co. Limited,.....Appellant
62A, Hazra Road,
Kolkata-700019
[PAN: AABCV0296K]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri N.S. Saini, Advocate, Shri P. Salarpuria, FCA and Shri S.K. Agarwal, FCA,
appeared on behalf of the assessee

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

Date of concluding the hearing : July 07, 2022

Date of pronouncing the order : July 07, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals) dated 28th September, 2021 passed for assessment year 2018-19.

2. Ground No. 1 raised by the assessee is general in nature, which does not require any adjudication.

3. In the second ground of appeal, the assessee has pleaded that the Id. CIT(Appeals) has erred in confirming the disallowance of Rs.20,34,408/-, which was added by the Id. Assessing Officer with the aid of section 36(1)(va) read with section 2(24)(x). In other words, this was employees' contribution to PF & ESI, which was deposited beyond the due date provided under both the Acts, but according to the assessee, these were deposited before the due date of filing of the return under section 139(1) of the Act.

4. With the assistance of Id. representatives, we have gone through the record carefully. This issue is covered in favour of the assessee by the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- Vijayshree Limited reported in 43 taxmann.com 396. Thus in view of the decision of the Hon'ble Calcutta High Court, this ground of appeal is allowed because the assessee has deposited the employees' contribution in PF & ESI before the due date of filing of the return.

5. In Ground No. 3, the grievance of the assessee is that the Id. CIT(Appeals) has erred in confirming the addition of Rs.42,52,435/- on account of ICDS adjustment.

6. Ld. Counsel for the assessee, at the very outset, submitted that there was a typographical error in the Tax Audit Report. The assessee has explained its position before the Id. Assessing Officer in the proceeding under section 143(1) as well as before the Id. CIT(Appeals), but its explanation was not accepted. According to the assessee, the Auditor has issued a Corrigendum exhibiting the fact that purchases were not taken into consideration and that led to the above anomaly. He made a reference to the page no. 10 of the paper book, where copy of Form No. 3CD is placed. He drew our attention towards Column No. 14(b) of the Tax Audit Report, which reads as under:-

"14(b): In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish:

14(b)	In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss, please furnish	Yes
Particulars	Increase in Profit(Rs.)	Decrease in profit(Rs.)
Increase in cost of opening on inclusion of Excise Duty on which CC is available	0	330852
Increase in sales of finished goods on inclusion of Excise Duty	5348047	0
Decrease in profit on account of the payment of Excise Duty	0	5348047
CC availed & utilised on RM consumed in the payment of Excise Duty on FG on basis of RM consumed	4583287	0

Thereafter he drew our attention to page no. 24 of the paper book, where Corrigendum has been issued. The Corrigendum reads as under:-

“SALARPURIA & PARTNERS
Chartered Accountants
7, Chittaranjan Avenue, Kolkata-700072

“CORRIGENDUM

In reference to our Tax Audit Report u/s 44AB of the Income Tax Act, 1961 (signed date 01/10/2018) of Vishwa Industrial Company Limited at 62A, Hazra Road, Kolkata, West Bengal-700019 (PAN No. AABCV0296K) for the Financial Year 2017-18 and Assessment Year 2018-19 due to typographical error of Annexure 14 Part 'b'. Now should be read as (details) given below:-

Revised Annexure 14, Part 'b'

Particular	Increase in profit (Rs.)	Decrease in profit (Rs.)
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<i>Increase cost of opening on inclusion of Excise Duty on which Cenvat Credit is available</i>		<i>3,30,852</i>
<i>Increase in sales of finished goods on inclusion of Excise Duty</i>	<i>53,48,047</i>	
<i>Increase in purchase cost of raw material on inclusion of Excise Duty on which Cenvat Credit is available</i>		<i>42,52,435</i>
<i>Decrease in Profit on account of the payment of Excise Duty</i>		<i>53,48,047</i>
<i>Cenvat Credit availed & utilised on raw material consumed in the payment of Excise Duty on finished goods on basis of raw material consumed</i>	<i>45,83,287</i>	

*For Salapuria & Partners
Chartered Accountants
SARVESH KUMAR SINGH
Sd/-
Chartered Accountant*

7. In the original Audit Report, purchase of Rs.42,52,435/- was remain to be included due to this human error the discrepancy arises. To our mind, Revenue Authorities ought to have been taken cognizance of the certificate. Error can be occurred in preparing such reports. Moreover, something has been pointed out by the assessee, then, it becomes a debatable issue and ought to have not been adjusted under section 143(1) of the Act. Thus we allow this ground of appeal and delete the addition.

8. In the next ground of appeal, the grievance of the assessee is that the Id. CIT(Appeals) has erred in confirming the addition of Rs.5,000/-. The assessee had incurred expenses towards payment of Club Subscription. Such expenditure was not allowed to the assessee under the

adjustment made by the Id. Assessing Officer. This issue is settled in a number of cases. The decision of the Hon'ble Madras High Court in the case of CIT -vs.- Sundaram Industries Limited [240 ITR 335 (Mad.)], where it was held that expenditure incurred for obtaining membership in the Club and its annual subscription is allowable expenditure. The submissions made by the assessee in this regard before the lower authorities read as under:-

"3.4. Reliance was also placed on the decision of the Hon'ble Madras High court in the case of CIT Vs Sundaram Industries Ltd 240 ITR 335 (Mad) has held as under:

"Section 37 postulates that any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed in computing the income of the assessee. The essential requirement for claiming the deduction of the expenditure is that the expenditure should have been incurred wholly and exclusively for the purposes of business of the assessee in the instant case, the assessee was a company and it was found by the Appellate Tribunal that the expenditure by way of subscription to the clubs was incurred for the purpose of promoting the business of the company and in view of the finding of the Tribunal, it must be held that the expenditure incurred was an allowable business expenditure. In the case of subscription to clubs, in so far as the assessee was concerned, the expenditure was incurred to promote and foster its business relationship. The object of the assessee was that its directors by remaining as members in some of the city clubs would give them certain social status, and it was obvious that by being members of the club, they would be able to meet various kinds of people in a calm and cool atmosphere of the club and because of the meeting they would develop business relationship, benefiting the assessee. Therefore, it could not be said that the possible advantage to the assessee was remote and far fetched. No doubt, there might be a personal benefit enjoyed by the director by the various types of amenities afforded at the club. But the personal benefit that went to the director was incidental to the membership of the club. The question whether a particular expenditure is allowable or not has to be tested from the point of view of the person expending the same and the object with which he incurred the expenditure. The assessee had not spent the money with the object of providing a personal relaxation to the director, but it was incurred to promote its business. In the commercial world, the contact with the right person is vital for an efficient business organization. The expenditure incurred could not be regarded as having been incurred for the personal benefit of the director. In each case, it has to be seen whether the object of the expenditure was to promote the business of the assessee. In view of the finding by the Tribunal, the assessee-company had incurred the expenditure wholly and exclusively for the purpose of its business and therefore the expenditure incurred by way of subscription to the club was an allowable expenditure."

3.5. Even otherwise it was submitted that appellant is a limited company and in case of companies there is no concept of personal expenses. Directors are also one of the key managerial persons cum employee of the company and getting the salary.

Regarding personal use of company's facilities by the directors; we rely on the cases of - Sayaji Iron & Engg. Co. Vs Commissioner of Income Tax (2002) 253 ITR 749 (Gujrat) D.S Construction (P) Ltd. Vs Income Tax officer ITAT Delhi (1987) 29 TTJ (Del) 22 Deputy Commissioner of Income Tax Vs Haryana Oxygen Ltd. (2001) 73 TTJ (Del) 575 Metallizing Equipment Co.(P) Ltd. Vs Deputy Commissioner of Income Tax 70 TTJ (Jd) 358. In all these cases; additions made on account of personal use of company's facilities by directors was held to be an allowable expenditure. The fact of the expenses has been properly explained to Ld. AO, As such addition made by AO is completely based on conjectures and surmises and need to be deleted. "

3.6. The NFAC has not adjudicated this ground of appeal though the submission of the appellant has been quoted therein.

3.7. Considering the foregoing facts, it is prayed that the disallowance be deleted in full".

9. After taking into consideration the submission of the assessee and the proposition laid down in various decisions, this ground of appeal is also allowed and the addition is deleted.

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

Order pronounced in the open Court on July 7, 2022.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 7th day of July, 2022

- Copies to :
- (1) **Vishwa Industrial Co. Limited,
62A, Hazra Road, Kolkata-700019**
 - (2) **Deputy Commissioner of Income Tax,
Circle-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069**
 - (3) **Commissioner of Income Tax (Appeals), National Faceless
Appeal Centre, (NFAC), Delhi**
 - (4) **Commissioner of Income Tax- ,Kolkata,**
 - (5) **The Departmental Representative**

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.