

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B" KOLKATA**

Before Shri Sanjay Garg, Judicial Member, and
Shri Manish Borad, Accountant Member

ITA No. 84/Kol/2022 Assessment Year: 2017-18		
Dr.Sarups Pest Control Pvt. Ltd, 22D Gorachand Road, Kolkata-700 014.	बनाम V/s.	D.C.I.T,CPC,Bangalore,Pin-560500, Karnataka.
PAN:AABCD1117F		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee		Shri Sankha Sadhu, Ld.AR
प्रत्यर्थी की ओर से/By Respondent/Department		Smt. Ranu Biswas, Addl. CIT/Ld. DR
सुनवाई की तारीख/Date of Hearing		04-07-2022
घोषणा की तारीख/ Date of Pronouncement		13 -07 -2022

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment years 2017-18 is directed against the order dt. 21-12-2021 passed by the Id. Commissioner of Income-tax (Appeals) [in short, hereafter referred to as the 'CIT-A'], National Faceless Appeal Centre (NFAC), Delhi, which is arising out of the intimation/order dt. 15-03-2019 framed u/s. 143(1) of the Income Tax Act, 1961 [in short, hereinafter referred to as 'the Act'] by the DCIT,CPC, Bangalore, Karnataka.

2. Brief facts of the case as culled out from records are that the assessee is a private limited company. It filed e-return of income for the AY 2017-18 on 30-10-2017 declaring income at Rs.48,86,465/-. The case of the assessee was processed u/s. 143(1) of the Act by CPC, Bangalore on 15-03-2019 computing the income of assessee at Rs.60,21,580/- after making disallowances Rs.79,701/- u/s. 43B of the Act and Rs.10,52,714/- u/s. 36(1)(va) of the Act (Rs. 5,26,357/- towards delayed payment of PF/ESI of employees' contribution and Rs.5,26,357/- towards payment of PF/ESI of employer's contribution.

3. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), but the assessee failed to succeed.

4. Now the assessee is in appeal before this Tribunal raising the following grounds of appeal: -

1. For that the learned CIT (Appeal) has erred in law and in fact by not deleting the addition of Rs. 79,701/- without considering the fact that the service tax payable of Rs.79,701/- was not routed through profit & loss account and the appellant has not claimed any sort of deduction and as such the Assessing Officer has erred in law by making disallowance of such amount by invoking provision of section 43B of the Income Tax Act, 1961.

2. For that the learned CIT (Appeal) has erred in law and in fact by confirming the addition of Rs. 10,52,714/- made by the Assessing Officer on account of employee's contribution to PF & ESI u/s. 36(1)(va) of the Income Tax Act, 1961, without considering the submission of the appellant that Rs. 5,26,357/- was the contribution from the employee and the total addition of Rs.10,52,714/- also includes share of contribution from the Employer amounting to Rs. 5,26.357/-

3. For that the learned CIT (Appeal) has erred in law by not deleting the addition of Rs. 5,26,357/- wrongly made by the Assessing Officer on account of employer's contribution to PF u/s. 36(1)(va) of the Income Tax Act, 1961. Though the Ld. CIT (Appeal) himself has observed that according to the Sec

43B of the Act any sum payable by the assessee as an employer by way of contribution to any provident fund and paid on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 438 and such deduction would be admissible for the accounting year.

4. For that the learned CIT (Appeal) has erred in law and in fact by confirming the addition of Rs. 5,26,357/- made by the Assessing Officer on account of employee's contribution to P F u/s.36(1)(va) of the Income Tax Act, 1961.

5. For that the learned CIT (Appeal) has erred in law by not considering the submission of the appellant that the provision of Sec 143(1)(a) do not empower the Assessing Officer to make adjustment of income which relates to debatable issues involving different legal aspect.

6. The Appellant craves leave to add and/or modify some other grounds before or at the time of hearing of the appeal.

5. The Ld. Counsel for the assessee has vehemently argued and contended that the Id. CIT(A) erred in confirming the alleged disallowances. A revised audit report u/s. 44AB of the Act is also placed before us. Reliance was placed on the decision of Co-ordinate Bench, ITAT, Kolkata, 'A 'Bench, Kolkata in the case of *Deloitte Haskins & Sells & Ors, ITA No. 539/Kol/2023 & Ors. Dt. 09-03-2022.*

6. Per contra, the Ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

7. We have heard the rival contentions and perused the records placed before us.

8. As far as ground no. 1 is concerned, regarding addition of Rs.79,701/- made u/s. 43B of the Act for service tax payable at Rs.79,701/-, we observe that in the intimation issued u/s. 143(1) of the Act, it is noted that the assessee has debited the alleged amount in P

& L account and since the same was not paid before the due date of filing return of income the disallowance made u/s. 43B of the Act was made. Before us the Ld. Counsel for the assessee has submitted that there was a mistake in the observations made in the audit report on Form No. 3CD attached with the audit report u/s. 44AB in Form 3CB at the time of filing return of income, wherein wrongly it was mentioned that service tax was routed through P & L account. Revised audit report dt. 05-04-2019 is also submitted, wherein it is stated that service tax was not routed through P & L account. Provisions of section 43B of the Act comes into play only on amount claimed as an expenditure in the Manufacturing/Trading and Profit & Loss Account.

9. Since in the instant case the processing u/s. 143(1) of the Act was completed on 15-03-2019, whereas the revised audit report is dt. 05-04-2019 in which claim of the assessee is that service tax of Rs.79,701/- was not routed through P & L account, therefore, this fact needs examination at the end of the Id. AO before whom the assessee shall place the relevant documents including the revised audit report and the financial statement to prove that the alleged amount of service tax of Rs.79,701/- has not been claimed as an expenditure in the P & L account. After affording reasonable opportunity of hearing to the assessee the Id. AO will decide this issue afresh in accordance with law. Thus, ground no.1 raised by the assessee is allowed for statistical purpose as per terms indicated above.

10. As far as ground nos. 2,3 & 4 are concerned, they relate to disallowance of Rs.10.52.714/-, which comprises of Rs.5,26,357/- each towards employers and employees' contribution to PF/ESI for delay in payment. As regards the Employer's contribution of Rs. 5,26,357/-, the uncontroverted facts remains that alleged amount is claimed as an expenditure in Profit & Loss account and the same stands duly deposited with the regulating authority of Provident Fund & ESI before the due date of filing of return of income u/s. 139(1) of the Act. Though there is a delay in depositing the same within the time limit as prescribed under the PF/ESI Act, but since the alleged sum has been paid before the due date of filing of return u/s. 139(1) of the Act no disallowance u/s. 43B of the Act is called for. Therefore, we find no merit in the finding of the Id. CIT(A) confirming the disallowance of Rs. 5,26,357/- towards employer's contribution of PF/ESI and the same stands deleted.

11. As regards employees' contribution of PF/ESI of Rs.5,26,357/- is concerned, we find that the case of the assessee is squarely covered by the decision of this Tribunal in the case of *Deloitte Haskins & Sells (supra)* wherein this Tribunal has considered the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *Vijayshree Ltd. in ITAT No. 243 of 2011* and also the ratio laid down by this Tribunal in the case of *Lumino Industries Ltd vs. ACIT in ITA Nos. 231 & 365/Kol/2021*. We, therefore, respectfully following the judicial precedence are of the considered view that since the details of payment of PF/ESI are duly captured in the audit report and the same was placed before the Id. CIT(A), it is an admitted fact that alleged

sum of employees' contribution stands duly deposited before the due date of filing of return of income provided u/s. 139(1) of the Act and also the amendments brought w.e.f 1-4-2021 in provisions of section 36(1)(va) as well as section 43B of the Act are held to be prospective in nature, the impugned disallowance of Rs. 5,26,357/- u/s. 36(1)(va) of the Act towards employees' contribution to PF/ESI deserves to be deleted. Accordingly, we set aside the finding of the Id. CIT(A) and allow ground nos. 2,3 & 4 raised by the assessee.

12. Ground nos. 5 & 6 are general in nature, which require no adjudication.

13. In the result, the appeal of the assessee is partly allowed for statistical purpose as per terms indicated hereinabove.

Order pronounced on....13-07-2022

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 13 -07-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/Assessee: Dr. Sarups Pest Control Pvt. Ltd, 22D Gorachand Road, Kolkata-700014.
2. प्रत्यर्थी/Respondent/Department: D.C.I.T, CPC, Bangalore, Karnataka-560500.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
- 6.गार्डफाइल/Guardfile.

By order/आदेश से, /True Copy/

Assistant Registrar
ITAT, Kolkata