

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

SHRI S.S. GODARA, JM AND DR. DIPAK P. RIPOTE, AM

ITA No. 414/PUN/2018 A.Y. 2008-09

Yeshwant SSK Ltd.
A/P chintamaninagar,
Theur, Tal. Haveli,
Dist. Pune.
PAN: AAATY1064B

: Appellant

Vs.

The Dy. CIT,(HQ)(IV), Pune.

: Respondent

Appellant by : None

Respondent by : Shri Rajeev Kumar

Date of Hearing : 30-06-2022

Date of Pronouncement : 27-07-2022

ORDER

PER S.S. GODARA, JM :

This assessee's appeal for A.Y. 2008-09 arises against the CIT(A)-7, Pune's order dated 25-10-2017 passed in case No. PN/CIT(A)-7/Cir-14/10636/2014-15 involving proceedings u/s 144 r.w.s. 147 of the Income-tax Act, 1961, in short "the Act".

2. None appears at the assessee's behest. It is accordingly proceeded ex parte. Heard the department. Case file perused.

3. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts is disallowing/adding back an amount of Rs. 2,60,41,788/-, we note that the CIT(A) duly discussed and affirmed the same u/s 43B of the Act observing as under:

5.3 I have carefully considered the facts of the case and law apparent from records. The assessee has e-filed return of income on 27/09/2008 declaring income of Rs. NIL. Assessment u/s. 143(3) was completed on 28.12.2010 determining total income of Rs. 13,03,22,127/-. The income of the appellant re-assessed u/s. 144 r. w. s. 147 vide order dated 07.02.2014 at Rs. 16,87,71,9301-. The AO observed that in audit report it is mentioned that liability of tax covered u/s. 43B incurred during the year was Rs. 8,14,27,7601- out of which Rs. 3,36,59,2901- and Rs. 1,54,76,1271- was paid leaving an amount of Rs. 3,22,92,514/- as unpaid. The assessee has added back Rs. 62,50,736/- u/s. 43B. The AO made addition of Rs. 2,60,41,7881- u/s. 43B.

5.4. During the appellate proceedings the appellant submitted details of liabilities added u/s. 43B by the AO as under:

Sr.No.	Name of liability	Amount (Rs.)
1)	Sales-tax	4,710/-
2)	Bonus Ex-gratia	28,02,338/-
3)	Provident fund	15,02,323/-
4)	Gratuity	3,08,630/-
5)	Excise duty payable	2,14,23,781/-
	Total	Rs. <u>2,60,41,782/-</u>

The appellant submitted detailed working as under:

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5.4.1 The appellant submitted details submissions in respect of each item as mentioned in para 5.2.

5.5 Ostensibly, the-e was pre-existing liabilities of Rs. 2,60,41,782/- as on 01.04.2007 under the five heads mentioned above. The appellant has not submitted any details in respect of the year in which such amount has been added u/s. 43B so that credit for same can be allowed on paid basis during the year under consideration.

5.5.1 The sale tax liability of Rs. 4,710/- has pre-existed as on 01.04.2007. Though the amount of Rs. 2,49,283/- has been paid during the year under consideration, the appellant has not demonstrated that pre-existed liability has been paid during the year under consideration. Further, the appellant has not demonstrated that the year in which such liability has been added back u/s. 43B. The credit on payment basis cannot be allowed on this account also. Therefore, AO has rightly added Rs. 4,710/- in respect of sale tax liability u/s 43B.

5.5.2 The appellant claimed pre-existed ex-gratia payment of Rs. 28,02,338/- as on 01-04-2007. The appellant has claimed that there is total payment of Rs. 52,47,323/- during the year under consideration. The appellant has not demonstrated that the year in which such liability has been added back u/s 43B. In absence of such demonstration the allowing credit on payment basis would lead to double deduction to the appellant one at the time of claiming deduction and another the year in which such liability is paid. Further, the appellant has not demonstrated that in A.Y. 2007- 08 how much addition were made u/s. 43B so as to verify the claim of the appellant. Therefore, AO has rightly added back ex-gratia payment of Rs. 28,02,338/- u/s. 43B pertaining to pre-existing liability.

5.5.3 The appellant claimed pre-existed provident fund payment of Rs. 15,02,323/- as on 01-04-2007. The appellant has claimed that there is total payment of Rs. 61,18,844/- during the year under consideration. The appellant has not demonstrated that the year in which such liability has been added back u/s 43B. The same logic mentioned in para 5.5.2 applies to provident fund also. Therefore, the AO has rightly added back provident fund payment of Rs/ 15,02,323/- u/s43B pertaining to pre-existed liability.

5.5.4 The appellant claimed pre-existed gratuity payment of Rs. 3,08,630/- as on 01.04.2007. The appellant claims that assessee is following mercantile method of accounting and the amount is shall be treated as paid u/s.43(2). The appellant further submits that payment of gratuity is covered u/s. 40A(7) and relied on the decision of the ITAT, Pune in case c~ Panchganga SSK Ltd. Apparently, the provisions of section 40A(7) allows making provision for payment of gratuity became payable during the year. It also restricts that no deduction should be allowed on paid basis. Once again the appellant has not demonstrated that the year in which pre- existed gratuity payment of Rs. 3,08,630/- were provided and claimed in return. The computation of the disallowance u/s. 43B submitted by the appellant shows that the appellant is claiming deduction on paid basis rather than on the basis of provisions made in respect of gratuity. In absence of such

demonstration The AO has rightly added gratuity payment of Rs. 3,08,6301- u/s. 43B.

5.5.5 The appellant claimed pre-existed excise duty of Rs. 2,14,23,781/- as on 01-04-2007. The appellant has claimed that there is total payment of Rs. 26,83,692/- during the year under consideration. The appellant has not demonstrated that the year in which such liability has been added back u/s 433B. In absence of such demonstration the allowing credit on payment basis would lead to double deduction to the appellant one at the time of claiming deduction and another the year in which such liability is paid. Further, the appellant has not demonstrated that in A.Y. 2007- 08 how much addition was made u/s. 438 so as to verify the claim of the appellant. Therefore, AO has rightly added back excise duty payable of Rs. 2,14,23,781/- u/s. 43B pertaining to pre-existing liability.

5.6 In view of above paragraphs action of the AO in adding back Rs. 2,60,41,782/- u/s. 43B is upheld and ground No.1 of the appeal is dismissed.”

4. Suffice to say it has come on record that the assessee's all five items are duly covered under the specified clause of sec. 43B which are allowable only on actual payment. We express our complete agreement with the learned lower authorities' action disallowing the same therefore. Ordered accordingly.

5. This assessee's appeal is dismissed.

Order pronounced in the open court on 27th day of July 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 27th day of July 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A) 7, Pune
4. The PCIT 6 Pune.
5. The D.R. ITAT A' Bench, Pune.
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	30-06-2022	Sr.PS
2	Draft placed before author	07-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS		Sr.PS
6	Kept for pronouncement on	27-07-2022	Sr.PS
7	Date of uploading of order	27-07-2022	Sr.PS
8	File sent to Bench Clerk	27-07-2022	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		