

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

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

**I.T.A. No. 943/KOL/2018  
Assessment Year: 2013-2014**

***M/s. R.P. Polypacks Pvt. Limited,.....Appellant  
25, Black Burn Lane, 3<sup>rd</sup> floor,  
Kolkata-700012  
[PAN: AADCB0553F]  
-Vs.-***

***Deputy Commissioner of Income Tax,.....Respondent  
Circle-1(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Vikash Garg, A.R., appeared on behalf of the assessee  
Shri Amal Kamat, CIT, appeared on behalf of the Revenue*

**Date of concluding the hearing : September 06, 2022  
Date of pronouncing the order : September 06, 2022**

**O R D E R**

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

The assessee is in appeal before the Tribunal against the order of Id. Principal Commissioner of Income Tax-1, Kolkata dated 22.03.2018 passed under section 263 of the Income Tax Act in assessment year 2013-14.

2. The assessee has raised seven grounds of appeal, which are argumentative and descriptive in nature. In brief, the grievance of the assessee is that the Id. CIT has erred in taking cognizance under section 263 of the Income Tax Act and thereby setting aside the assessment order for passing a fresh assessment order.

3. With the assistance of Id. Representatives, we have gone through the record carefully. The Id. Counsel for the assessee brought to our notice the show-cause notice dated 12.02.2018 issued by the Id. Commissioner under section 263 as well as the reply of the assessee, which has been reproduced in paragraph no. 4 of the impugned order. We deem it appropriate to take note of these details, which read as under:-

“4. In response to the said notice, Shri Vikas Garg, FCA & A/R of the assessee submitted written reply on 28.02.2018 which are as follows:

“

*Kindly take reference to your above notice dated 12/02/2018 fixing date of compliance for 16/02/2018.*

*However as the aforesaid notice was received on 16/02/2018 itself the assessee company was unable to make compliance and it is requested that the same may please be condoned.*

*The impugned notice u/s. 263(1) has been issued for the following reason: -*

*(1) That provision for excise duty on closing stock as appearing in Note 8 to the Balance Sheet as on 31/03/2013 has increased by Rs. 60,52,363 (Rs.94,48,045 as on 31/03/2013 - Rs. 33,95,682/- as on 31/03/2012 which remained unpaid and subsequently carried to \*current liabilities\* of the Balance Sheet.*

*It is further alleged in your said notice that this was required to be added in the total income of the assessee as any amount debited in the amount as \*provisions\* is not allowable expenditure u/s.37 of the Income Tax Act, 1961.*

*(2) That AO has passed the impugned assessment order without, making enquiries or verification which should have been made in the case.*

*In this regard it is submitted as follows:-*

*1. That there appears to be a mistake in issue of notice, u/s. 263(1) as the assessee company has not shown provision of excise duty payable on closing stock, at Rs. 94,48,045/- as on 31/03/2013 and at Rs.33,95,682/- as on 31/03/2012. In fact the figures of excise duty payable on closing stock as on 31/03/2013 and 31/03/2012 are as follows:-*

<i>31/03/2013</i>	<i>Rs.27,14,588/-</i>
<i>31/03/2012</i>	<i>Rs. 2,16,387/-</i>

*Copy of audited financial statements is enclosed as Anriexure-1.*

*2. That as per provision contained in the Income Tax Act, 1961 the allowability of taxes payable, such as Excise duty, outstanding as at the end of the year is governed by section 43B.*

*Section 43B inter alia provides that notwithstanding anything contained in any provision of Income Tax Act any sum payable by the assessee by way of tax, duty cess or fee shall be allowed in the year in which it is actually paid irrespective of the year in which the liability to pay arises.*

*First proviso to section 43b provides that taxes etc. payable as at the end of the year, and appearing in the Balance Sheet, will be allowable if the same are paid before the due date of filing the return.*

*(3) That the assessee company had accordingly, in the Tax audit report, disclosed the amount of Rs.27,14,588/- appearing as Excise duty payable in the Balance Sheet as on 31/03/2013 (along with the fact that the same has been paid upto 30/04/2013 i.e. before due date of filing return which falls on 30/09/2013. Kindly refer clause 21B of form 3CD together with annexure CD-VI thereto. Copy of Tax Audit Report in Form 3Cd filed during assessment proceedings is enclosed as Annexure -2,*

*(4) That during assessment proceedings the assessee made specific submissions that sum of Rs. 27,14,588/- is allowable as the same had been paid before due date of filing return of income and in addition to the evidence in the form of Tax audit Report furnished u/s. 44AB, assessee also filed the Excise duty account for April 2013 evidencing payment of Rs .42,99,945/ - as on 30.04.2013. Copy of reply along with details filed is enclosed as **Annexure-3**".*

4. Apart from the above details, the assessee has relied upon large number of decisions, which have also been noticed by the Id. Commissioner. In brief, the issue according to the Id. Commissioner is that the assessee had made provision of Excise Duty, which was not an allowable expenditure and Id. Assessing Officer has erred in accepting this claim of the assessee in an assessment order passed under section 143(3) of the Income Tax Act. On the other hand, it has been demonstrated before us that though a provision of Rs.27,14,588/- was made by the assessee, which is reflecting in account as on 31.03.2013 but before filing of the due date of the return. This amount was paid actually in April, 2013. Hence, no expenditure, for which provision was made, has been allowed by the Id. Assessing Officer. A disallowance under section 43B out of Excise Duty provision could be made if it was not actually paid by the assessee. The moment assessee has actually made the payment, then there is no revenue loss, which ought to have suffered the taxes. For buttressing this contention, Id. Counsel for the assessee drew our attention to page no. 66, i.e. valuation of closing stock at the end of the

year, pages no. 24, 42 exhibiting the provisions in the accounts as well as payment of this provision in the month of April, i.e. 30.04.2013, the due date of filing of the return on 30<sup>th</sup> September, 2013. In other words, when accounts are closed on 31.03.2013, a provision was reflected, which has not to be allowed to the assessee. But the moment the provision was actually paid by the assessee on 30.04.2013, nothing left for disallowance out of the Excise Duty expenditure.

5. On due consideration of the above facts and circumstances, we are of the view that even for argumentative sake, it is assumed that there was an error then also we find there is no prejudice to the interest of revenue. The assessee has specifically raised all these pleas in its written submission before the Id. Commissioner and had the Commissioner verified this fact from the Id. Assessing Officer or from the accounts? Then it would come that no provision made by the assessee as a Revenue expenditure. The expenditure has been allowed to the assessee under section 43B on actual payment before the due date of filing of the return. The Id. Commissioner has committed an error by not appreciating these facts in true perspective. Therefore, we find force in the contention of the assessee and the order of the Id. Commissioner is not sustainable. It is quashed.

**6. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on September 6, 2022.

Sd/-

Sd/-

**(Rajesh Kumar)**  
**Accountant Member**

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

***Kolkata, the 6<sup>th</sup> day of September, 2022***

*Copies to : (1) M/s. R.P. Polypacks Pvt. Limited,  
25, Black Burn Lane, 3<sup>rd</sup> floor, Kolkata-700012*

*(2) Deputy Commissioner of Income Tax,  
Circle-1(2), Kolkata,*

***Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069***

- (3) *Pr. Commissioner of Income Tax, Kolkata-1;*  
(4) *The Departmental Representative*  
(5) *Guard File*

***TRUE COPY***

*By order*

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

***Laha/Sr. P.S.***