

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

**BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT  
&  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 2615/Kol/2019  
Assessment Year: 2013-14**

<b>M/s. Bina Metal Way (P) Ltd.</b> AH-138, Salt Lake Sector-II Kolkata - 700091 <b>PAN : AABCB1511D</b>	<b>Vs</b>	<b>Deputy Commissioner of Income, Circle - 1(2), Kolkata</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Manish Tiwari, FCA	
Revenue by :	Shri Ranu Biswas, Addl. CIT, D/R	

सुनवाई की तारीख/Date of Hearing : 06/09/2022  
घोषणा की तारीख /Date of Pronouncement: 04/11/2022

**आदेश/ORDER**

**PER SHRI RAJESH KUMAR, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - 5, Kolkata (hereinafter the "Id. CIT(A)") dt. 01/10/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2013-14.

2. The issue raised in Ground No. 1 is against the confirmation of addition of Rs.10,19,235/- by the Id. CIT(A) as made by the Assessing Officer on account of PF & ESI without appreciating the fact that the payment has been already made before the due date of filing of return.

3. After hearing rival contentions and perusing the material available on record, we find that the instant issue requires verification at the level of the Assessing Officer as this requires factual verification of facts as to whether these payments were made before the due date as prescribed in the relevant Acts. Accordingly, we restore this issue to the file of the Assessing Officer to decide the

same in accordance with law. Accordingly Ground No. 1 is allowed for statistical purposes.

4. Ground No. 2 is against the confirmation of addition of Rs.22,12,506/- by the Id. CIT(A) which was disallowed by the Assessing Officer u/s 37 of the Act by stating that the same is penal in nature.

5. Facts in brief are that the assessee has paid interest for delay in filing of statutory dues amounting to Rs.22,12,506/-. The Assessing Officer had added the same by treating the same as penal in nature which according to the AO were not admissible u/s 37 of the Act whereas the Id. CIT(A) confirmed the same by holding that the assessee has failed to furnish the details in respect of the same as to which item or/and under which section these interest payments were made.

6. After hearing rival contentions and perusing the material available on record, we are of the view that the interest of justice would be met if the assessee is given one more opportunity to present its case before the Assessing Officer. Accordingly, this issue is restored to the file of the Assessing Officer with a direction to decide the same in accordance with law after providing the assessee reasonable opportunity. The assessee is also directed to file all necessary details which he wishes to file or which the Assessing Officer may require. Accordingly, Ground no. 2 is allowed for statistical purposes.

7. Ground no. 3 is against the confirmation of Rs.29,37,460/- by the Id. CIT(A), which was disallowed by the Assessing Officer on account of bills discounting charges u/s 40(a)(ia) of the Act for non deduction of tax at source.

8. The facts in brief are that, during the course of assessment proceeding, the Assessing Officer observed from the details filed by the assessee that during the

year, the assessee has paid interest on bills discounting on which TDS has not been deducted in terms of Section 194A of the Act and, therefore, these payments were not allowable in terms of Section 40(a)(ia) of the Act. During the appellate proceedings also, the ld. CIT(A) simply confirmed the order of the Assessing Officer on this issue.

9. After hearing rival contentions and perusing the material available on record, we find that the contentions raised by the ld. Counsel for the assessee before us is that these are the bill discounting charges and that this income has been duly offered to tax by the recipient of these discounting charges and, therefore, addition in the hands of the assessee is unwarranted and against the provision of law. In our considered view if the income is offered to tax by the recipient of income then no disallowance is required to be made as has been held by the Apex Court in *Hindustan Coca Cola Beverages P Ltd. Vs. CIT* [2007] 293 ITR 226 (SC). In view of the facts and circumstances, we are inclined to restore this issue to the file of the Assessing Officer to examine whether the recipients have shown these bill discounting charges in their return of income and if so, the same may kindly be deleted. While doing so we fortify our stand by relying on the judgment of the Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages P Ltd. Vs. CIT* in [2007] 293 ITR 226 (SC) wherein it was held as under:-

***“Section 201 of the Income-tax Act, 1961 - Deduction of tax at source - Consequence of failure to deduct or pay - Whether where deductee, recipient of income, has already paid taxes on amount received from deductor, department once again cannot recover tax from deductor on same income by treating deductor to be assessee-in-default for shortfall in its amount of tax deducted at source - Held, yes”***

Accordingly ground no 3 is allowed for statistical purpose.

10. Ground No. 4, is against the confirmation of disallowance to the tune of Rs.14,42,289/- by the ld. CIT(A) as disallowed by the Assessing Officer u/s 43B of

the Act in respect of expenses relating to earlier years paid by the assessee in the current financial year.

11. The facts in brief are that during the year, the assessee claimed deduction in respect of statutory liabilities discharged during the year amounting to Rs.56,62,646/-. However, during the course of assessment proceedings, evidences were only produced in respect of payments of Rs.42,20,357/- and the Assessing Officer accordingly restricted the allowance to the extent of the same by disallowing the remaining amount of Rs.14,42,289/-. The Id. CIT(A) restored the issued back to the file of the Assessing Officer to verify the same and allow the deduction accordingly when assessee contended that the actual payments were in fact more than the said amount.

12. Since the issue has already been restored to the AOI by the first appellate authority, the ground raised before us is restored to the file of the Assessing Officer with a direction to verify and decide the same in accordance with law. Accordingly Ground No. 4 is allowed for statistical purposes.

13. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 4<sup>th</sup> November, 2022 at Kolkata.**

*Sd/-*

**(RAJPAL YADAV)  
VICE PRESIDENT**

*Sd/-*

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated 04/11/2022

*\*SC SpA*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**