

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.1842/Del/2020

[Assessment Year : 2017-18]

Nehru Place Hotels Pvt.Ltd., S-I, American Plaza, International Trade Tower, Nehru Place, New Delhi-110019. PAN-AAACN3230C	vs	DCIT, CPC, Bangalore.
APPELLANT		RESPONDENT
Appellant by	Shri R.K.Kapoor, CA & Ms. Deepti Gupta, CA	
Respondent by	Shri Jeetender Chand, Sr.DR	
Date of Hearing	10.11.2022	
Date of Pronouncement	16.11.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2017-18 is directed against the order of Ld. CIT(A)-23, New Delhi dated 04.09.2020. The assessee has raised following grounds of appeal:-

Ground No.1 (a)

"That the Ld. CIT(Appeals) has erred in law on the facts in sustaining the disallowance of actual payment of bonus on 30.10.2017 amounting to Rs. 82,02,811/- after the date of Audit Report dated 29.10.2017, but on or before the due date of filing of the return u/s 139(1) on wholly illegal, erroneous and untenable ground.

Ground No.1 (b)

That the Ld. CIT(Appeals) has failed to appreciate that the disallowance u/s 143(l)(a)(iv) cannot over-ride the statutory proviso to section 43B, which provides that where any sum is actually paid before the due date of filing of the return u/s 143(1) shall not be disallowed.

Ground No. 2 (a)

That the ld. CIT(Appeals) was not legally justified in rejecting the assessee's claim of deduction on account of write back of provision of bonus amounting to Rs. 5,54,288/- out of pre-existing liability of unpaid bonus to employees disallowed in earlier years u/s 43B of the Income Tax Act.

Ground No. 2 (b)

Under the facts and circumstances of the case, the Ld. CIT(Appeals) has failed to appreciate that the disallowance of Rs. 5,54,288/- being the amount written back out of pre-existing unpaid liability of bonus has resulted in double disallowance, one in the earlier years and again in the year under consideration on account of write back of the same liability of Rs. 5,54,288/-.

Ground No. 2 (c)

On the facts and circumstances of the case, the disallowance of Rs. 5,54,288/- may be deleted.

Ground No. 3

That each ground is independent of and without prejudice to other grounds raised herein.

Ground No. 4

That the aforesaid grounds are without prejudice to the one another raised herein."

BRIEF FACTS OF THE CASE

2. Facts giving rise to the present appeal are that the assessee filed return of income declaring income of Rs.21,83,05,160/- on 30.10.2017. The return was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act") and intimation dated 16.03.2019 was issued thereby, the Assessing Officer ("AO") made certain adjustments related to payment of bonus by the assessee and

also the claim of write back of bonus out of pre-existing liability of unpaid bonus amounting to Rs.5,54,288/- and Rs.82,02,811/- respectively.

3. Aggrieved against this, the assessee filed appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee. Thereby, the Ld.CIT(A) sustained the adjustment of Rs.5,54,288/- and Rs.82,02,811/- in respect of liability added back.

4. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

5. Apropos to **Ground Nos. 1(a) & 1(b)**, Ld. Counsel for the assessee submitted that the authorities below have grossly made error in not allowing the claim of the assessee. He contended so far payment of bonus is concerned. The actual payment of bonus was made before the due date of filing of income tax return. He contended that as per section 43B of the Act which has overriding effect if the bonus is paid before the date of filing of return of income, same is allowable. He contended that return of income was filed on 07.11.2017 as the return of filing of income was extended by CBDT vide notification dated 31.10.2017. He therefore, contended qua Ground Nos.1(a) and 1(b) raised by the assessee, the authorities below have grossly erred in making addition and sustaining the same.

6. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

7. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find merit into the contention of the Ld. Counsel for the assessee that as per section 43B of the Act where any sum is

actually paid before the due date of filing of return of income, same cannot be disallowed u/s 143(1) of the Act. However, for verifying whether the bonus was actually paid before the due date of filing of return of income, we restore Ground Nos.1(a) & 1(b) raised by the assessee to the AO to verify whether bonus was paid before due date of filing of return of income. If the bonus was paid before the due date of filing of return of income. The AO would delete the disallowance. The Ground Nos.1(a) and 1(b) raised by the assessee are allowed for statistical purposes.

8. Apropos to **Ground Nos. 2(a) to 2(c)**, Ld. Counsel for the assessee submitted that the authorities below failed to appreciate that disallowance of Rs.5,54,288/- being the amount written back out of pre-existing unpaid liability of bonus has resulted in double disallowance, one in the earlier year and again in the year under consideration on account of write back of the same liability of Rs.5,54,288/-.

9. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find merit into the contention of the Ld. Counsel for the assessee that there would be double disallowance if the amount was disallowed in earlier years. Therefore, this issue is also restored to the file of AO to verify the correctness of the claim of the assessee that the amount was written back out of pre-existing unpaid liability of bonus and decide the issue afresh. Thus, Ground Nos. 2(a) to 2(c) raised by the assessee are allowed for statistical purposes.

11. The remaining **Ground Nos. 3 & 4** raised by the assessee are general in nature, need no separate adjudication.

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

Order pronounced in the open Court on 16th November, 2022.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI