

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.38, 39 & 40/RPR/2021
निर्धारण वर्ष / Assessment Years : 2015-16, 2016-17 & 2017-18

Chhattisgarh State Beverages Corporation Limited
Aabkari Bhavan, Chokra Nala,
Labhandi, Raipur-492 001
PAN : AACCC3163B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax,
Raipur-1 (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri Praveen Jain, CA
Revenue by :Shri P.K Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing :14.09.2022

घोषणा की तारीख / Date of Pronouncement : 12.12.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee company which is wholly owned by the State Government of Chhattisgarh are directed against the respective orders passed by the Principal Commissioner of Income Tax, Raipur-1 (for short 'Pr.CIT'), dated 28.03.2021, which in turn arises from the respective orders passed by the A.O. u/s. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 30.10.2017 for assessment year 2015-16 AND intimation(s) under Sec. 143(1) of the Act, dated 16.10.2018 for A.Y 2016-17 and A.Y.2017-18, respectively. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall take up the appeal in ITA No.38/RPR/2021 for the assessment year 2015-16 as the lead matter, and, the order therein passed qua the common issue(s) therein involved shall apply mutatis-mutandis to the remaining cases. The assessee has assailed the impugned order passed by the Pr. CIT u/s.263 of the Act, dated 28.03.2021 on the following grounds of appeal before us :

1. Ground 1: That on the facts and on the circumstances of the case and in law, Ld. PCIT has erred in initiating Revision Proceedings u/s. 263, since there were no materials before him to

justify his finding that Assessment Order passed by the AO is erroneous insofar as it was prejudicial to the interests of the Revenue. Since the twin condition is not satisfied, entire Revision proceedings are void-ab-initio and may kindly be quashed/annulled.

2. Ground 2: That on the facts and on the circumstances of the case and in law, since there was no error in the assessment order passed u/s.143(3), the revision proceedings-initiated u/s 263 is void ab initio and against law of natural justice. Revision proceedings may kindly be quashed/ annulled.

3. Ground 3: That on the facts and on the circumstances of the case and in law, Ld. Pr. CIT has erred in law in setting aside the assessment order passed u/s. 143(3) of the Act for the AY 2015-16 with a direction to redo the assessment considering the applicability of provisions of Sec. 40(a)(iib) of the Act for disallowance of VAT expenses amounting to Rs. 53,65,46,087/-. Same is bad in law, against law of natural justice and uncalled for, Assessment Order passed by the AO may kindly be restored.

4. Ground 4: That on the facts and on the circumstances of the case and in law; Ld. PCIT has erred in directing Disallowance of claim of VAT u/s 40(a)(iib) amounting to Rs 53,65,46,087/- incurred and paid by the assessee. The disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.

5. Ground 5: That on the facts and on the circumstances of the case and in law, Ld. PCIT has erred in initiating 263 proceedings directing disallowance of claim of VAT u/s 40(a)(iib), provision of which itself are ultra vires. Thus disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.

6. Ground 6: That on the facts and on the circumstances of the case, Revision proceedings have been initiated by Pr. CIT at the peak of Global Pandemic without allowing sufficient time/ opportunity to the assessee. The disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.

7. Ground 7: That on the facts and on the circumstances of the case, Ld. Pr. CIT, erred in directing disallowance of VAT which is a Statutory Liability levied by the State Government, without appreciating the submissions and explanation of the assessee. The disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.

8. Ground 8: That on the facts and on the circumstances of the case, disallowance directed in Revision Order passed by the Ld. Pr. CIT is opposed to facts and law on several grounds. The

disallowance is bad in law, against law of natural justice and uncalled for and may kindly be deleted.

9. Ground 9: The assessee craves leave to add, urge, alter or withdraw any ground/s before or at the time of hearing of this appeal.

III. Relief SOUGHT

That above mentioned Revision Order u/s.263 passed by the Ld. Pr. CIT, Raipur-1 directing the A.O to make disallowance of VAT expenses amounting to Rs.53,65,46,087/- may kindly be deleted and Revision Order may kindly be quashed/annulled.”

3. Succinctly stated, the assessee company which is wholly owned by the State Government of Chhattisgarh had e-filed its return of income for A.Y.2015-16 on 30.09.2015, declaring an income of Rs. 22,88,04,100/-. Subsequently, the assessee had revised its return of income on 30.03.2016 at the originally declared income of Rs. 22,88,04,100/-. Case of the assessee was thereafter selected for “limited scrutiny” under CASS for the following reasons:

- (i). Large deduction claimed under chapter VI-A.
- (ii). Large other expenses claimed in the Profit & Loss a/c.
- (iii). Mismatch in sales turnover reported in Audit report and ITR

Original assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3), dated 30.10.2017 determining income of the assessee at Rs.25,43,28,545/-.

4. The Pr. CIT after culmination of the assessment proceedings called for the assessment records of the assessee company. On a perusal of the

records, it was observed by the Pr. CIT that the assessee company under the heading “Administrative Selling & Other Expenses” had debited an amount of Rs.53,65,46,087/- under the sub-head “VAT”. It was observed by the Pr. CIT that the A.O in the course of the assessment proceedings had without raising any query as regards the assessee’s entitlement for claim of deduction of the aforesaid expenditure had summarily accepted the same. It was further observed by the Pr. CIT that the assessee had not raised any such claim of “VAT” in its financial statement for the immediately preceding year. On necessary verification, it was gathered by the Pr. CIT that as per notification dated 07.08.2013 issued by the State Government of Chhattisgarh “VAT” was levied on sale of Foreign/Indian made foreign liquor by FL-10 Licensee Distributor. It was, thus, observed by the Pr. CIT that “VAT” was being levied only on the FL-10 Licensee Distributor in the State of Chhattisgarh i.e. the assessee company, which was the State Government undertaking itself. It was observed by the Pr. CIT that the State Government of Chhattisgarh in the past was collecting huge amount of money from the assessee company in the form of license fee, privilege fee etc., which with the advent of the sub-clause (B) of Clause (iib) of Section 40(a) of the Act were rendered as non-deductible in the hands of the assessee company from A.Y.2014-15 onwards. The Pr. CIT was of the view that it was only pursuant to the insertion of Section 40(a)(iib)(B) vide the Finance Act, 2013 w.e.f. 01.04.2014 that had

triggered the amendment in the VAT Act and had led to exclusive levy of VAT on the assessee company. It was observed by the Pr. CIT that VAT was exclusively levied on the assessee company and was neither levied on the supplier nor was it collected or loaded (included) in the retail price, meaning thereby, that this tax was being charged exclusively on the assessee company. The Pr. CIT holding a conviction that levy of such VAT on the assessee company was principally against the basic tenets of the scheme of taxation under VAT, for the reason that the same would principally start from the beginning of the chain i.e. the production and end with the final consumer. Elaborating on his aforesaid conviction, it was observed by the Pr. CIT that none of the aforesaid principles had been applied in the case of the assessee as no such VAT was either payable by the suppliers/producers nor was it payable by the consumers and the entire load/burden of such amount was being borne by the assessee company, and as a result whereof the amount of Rs.53.65 crore (approx.) was appropriated by the State Government from the assessee company, which was admittedly a State Government undertaking. On the basis of his aforesaid deliberation, the Pr. CIT was of the view that the appropriation of the aforesaid amount of Rs.53.65 crore (supra) clearly fell within the realm of disallowance contemplated in sub-clause (B) of clause (iib) of Section 40(a) of the Act, as per which any amount appropriated directly or indirectly under any head by whatever name called, from a State

Government undertaking by the State Government is not to be allowed as a deduction in computing the income chargeable under the head “profits and gains from business or profession”.

5. Also, it was observed by the Pr. CIT that as the gross profit of the assessee company for the year under consideration had not perceptibly increased in comparison to that of the preceding year, therefore, it could safely be concluded that the VAT charges on the assessee company was not incorporated in its selling rate. Considering the fact that the A.O had not conducted any enquiry in respect of the assessee’s entitlement for claim of deduction of VAT which was debited in its profit & loss account, and had summarily accepted the same, the Pr. CIT drawing support from the judgment of the Hon’ble High Court of Kerala in the case of Kerala State Beverages (Manufacturing and Marketing) Corporation Limited Vs. ACIT, Circle-1(i), Trivandrum (2020) 116 taxmann.com 555 (Kerala) called upon the assessee to show cause as to why the order passed by the A.O u/s.143(3), dated 30.10.2017 may not be revised u/s.263 of the Act. Although, the assessee, inter alia, assailed the *vires* of Section 40(a)(iib) of the Act, and also tried to impress upon the Pr. CIT that no disallowance of VAT was called for under the said statutory provision, however, the same did not find favor with him. The Pr. CIT holding a conviction that the A.O without applying his mind had summarily accepted the assessee’s claim

for deduction of VAT of Rs.53.65 crore (supra), thus, held the order passed by him u/s 143(3), dated 30.10.2017 as erroneous in so far as it was prejudicial to the interest of the revenue in view of "Explanation 2" of Section 263 of the Act. Accordingly, the Pr. CIT directed the A.O to give effect to his order passed u/s.263 of the Act and disallow the assessee's claim for deduction of VAT of Rs.53.65 crore (supra).

6. The assessee being aggrieved with the order of the Pr. CIT passed u/s.263 of the Act, dated 28.03.2021 has carried the matter in appeal before us.

7. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. The Ld. Authorized Representative (for short 'AR') for the assessee, at the very outset of hearing of appeal submitted that the issue involved in the present appeal is no more *res-integra* pursuant to the judgment of the Hon'ble Supreme Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT, Circle-1(1), Civil Appeal No.11 of 2022 (SC) dated 03.01.2022, Page 80-108 of APB. Our attention was drawn by the Ld. AR to the observations recorded by the Hon'ble Apex Court in its order passed in the case of Kerala State

Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT (supra). It was averred by the Ld. AR that the Hon'ble Apex Court had approved the view taken by the Hon'ble High Court of Kerala, wherein it was held that as surcharge on sales tax is a tax and Section 40(a)(iib) does not contemplate 'tax', and surcharge on sales tax is not a 'fee' or a 'charge', therefore, no disallowance under the said section was called for in the hands of the assessee. It was averred by the Ld. AR that though the Hon'ble Apex Court had upheld the view taken by the Hon'ble High Court to the extent triggering of disallowance u/s.40(a)(iib) of the Act qua the 'gallonage fee', 'license fee' etc. was concerned, but had categorically observed that as surcharge on sales tax and turnover tax was not a fee or charge coming within the scope of Section 40(a)(iib)(A) or 40(a)(iib)(B), therefore, the same as held by the Hon'ble High Court could not be disallowed under the said statutory provision.

8.1 It was submitted by the Ld. AR that now when the Hon'ble Apex Court had distinguished "gallonage fee" as against "tax", therefore, the reliance placed by the Pr. CIT on the judgment of the Hon'ble High Court of Kerala in the case of Kerala State Beverages (Manufacturing and Marketing) Corporation Limited Vs. ACIT, Circle-1(i) (supra) in so far the same pertained to disallowance of "gallonage fees" u/s.40(a)(iib) of the Act was absolutely misconceived and misplaced, in the context of the facts

involved in the case of the present assessee. Elaborating his aforesaid contention, it was submitted by the Id. A.R that the Hon'ble Apex Court in unequivocal terms had clarified that Section 40(a)(iib) does not contemplate 'tax', and surcharge on sales tax is not a 'fee' or a 'charge', therefore, no disallowance under the said section was called for in the case of the assessee before them. It was, thus, the claim of the Ld. AR that now when the issue involved in the present appeal is settled pursuant to the judgment of the Hon'ble Apex Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT, Circle-1(1), Civil Appeal No.11 of 2022 (SC), dated 03.01.2022, therefore, the order passed by the Pr. CIT u/s.263 of the Act dated 28.03.2021 not being in conformity with the aforesaid binding judicial pronouncement was liable to be struck down.

8.2 Alternatively, it was submitted by the Ld. AR that the case of the assessee had been selected for "limited scrutiny" u/s.143(2) of the Act, for three reasons, viz. "(i). Large deduction claimed under chapter VI-A; (ii). Large other expenses claimed in the Profit & Loss a/c; and (iii). Mismatch in sales turnover reported in Audit report and ITR", and the assessee's claim for deduction of VAT did not fall within the scope of either of the reasons for which the case was picked up for limited scrutiny. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the claim

for deduction of VAT of Rs.53.65 crore (supra) was raised by the assessee under the sub-head "VAT/Sales tax" [Sr. No.7 (vi) of Part A-P & L account of return of income] and did not form part of other expenses of Rs.7,82,43,058/- that were claimed under the sub-head "Other expenses" [Sr. No.38 of Part A- P & L account of return of income]. It was, thus, the claim of the Ld. AR that as the case of the assessee was, inter alia, selected for 'limited scrutiny' for making verifications of "Large other expenses claimed in the P & L account", and not for the purpose of verifying the admissibility of its claim for deduction of VAT/Sales tax of Rs.53.65 crore (supra), therefore, the A.O was divested of his jurisdiction in adverting to and drawing any inferences qua the maintainability of the assessee's claim for deduction of the aforesaid amount.

8.3 It was further submitted by the Ld. AR that it was not a case where the A.O had in the course of the scrutiny assessment got the "limited scrutiny" assessment proceedings converted into "full scrutiny" by obtaining the approval of the Pr. CIT. On the basis of his aforesaid contentions, it was submitted by the Ld. AR that now when the A.O in the course of the "limited scrutiny" assessment could not have drawn any inferences as regards the maintainability of the assessee's claim for deduction of VAT of Rs.53.65 crore (supra), therefore, the Pr. CIT could not have held the order passed by the A.O as erroneous, for the reason that he

had failed to disallow the said claim of deduction of the assessee. It was, thus, the claim of the Ld. AR that what under law could not have been directly done by the A.O, could not have been indirectly done by the Pr. CIT in the garb of the jurisdiction vested with him u/s.263 of the Act. In support of his aforesaid contentions the Ld. AR had relied on the order of the ITAT, Mumbai in the case of M/s Su-Raj Diamond Dealers Pvt. Ltd Vs. Pr. CIT, ITA No.3098/Mum/2019 dated 27.11.2019. Accordingly, the Ld. AR on the basis of his aforesaid contentions had assailed both the validity of jurisdiction that was assumed by the Pr. CIT u/s.263 of the Act for disallowing the assessee's claim for deduction of VAT u/s.40(a)(iib) of the Act of Rs.53.65 Crore (supra), as well as had assailed the validity of the impugned disallowance by drawing support from the judgment of the Hon'ble Supreme Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. ACIT, Circle 1(1) (supra).

9. Per contra, the Ld. Departmental Representative (for short 'DR') had relied on the order passed by the Pr. CIT u/s.263 of the Act, dated 28.03.2012. It was submitted by the Ld. DR that as the A.O had summarily accepted the assessee's claim for deduction of 'VAT of Rs. 53.65 crore (supra)' without applying his mind, therefore, the Pr. CIT had validly stepped in and exercising his jurisdiction u/s.263 of the Act r.w. "Explanation 2" had rightly held the order passed by the A.O as erroneous,

in so far as it was prejudicial to the interest of the revenue u/s.263 of the Act. Apropos the maintainability of the assessee's claim for deduction of VAT of Rs. 53. 65 crore (supra), it was submitted by the Ld. DR that as 'VAT' was in substance 'fee' or 'charge', therefore, the same was clearly liable to be disallowed u/s. 40(a)(iib) of the Act. Advancing his aforesaid contention, it was submitted by the Ld. DR that in the preceding years the State Government of Chhattisgarh was collecting huge amount of money from the assessee company in the form of license fee, privilege fee etc., and it was only with the advent of the sub-clause (B) of Clause (iib) of Section 40(a) of the Act, which rendered the said payment as non-deductible in the hands of the assessee company from A.Y.2014-15 onwards, that the amendment was made available in the 'VAT Act' therein extending the levy on the assessee company. It was submitted by the Ld. DR that as the 'VAT' was exclusively levied on the assessee company and was neither levied on the supplier nor was it collected or loaded in the retail price, therefore, it was established beyond doubt that the said term was in fact a colorable device that was used with an intent to evade the rigors of Section 40(a)(iib) of the Act. In sum and substance, it was the claim of the Ld. DR that as the 'VAT' paid by the assessee company to the State Government of Chhattisgarh, as in the past, was nothing but license fee, privilege fee etc., therefore, the same clearly fell within the realm of the disallowance contemplated u/s 40(a)(iib) of the Act.

10. Rebutting the aforesaid contention of the Ld. DR, it was submitted by the Mr. Praveen Jain, the Ld. Counsel for the assessee, that the aforesaid claim of the department was absolutely misconceived and in fact, misplaced. Elaborating on his aforesaid contention, it was submitted by Mr. Jain, the ld. A.R that the “VAT” paid by the assessee was clearly a “tax” and not in the nature of “fee” or “charge”. It was submitted by the Ld. AR that the amount of “license fee” of Rs.4 crore that was paid by the assessee company during the year was suo-moto offered for disallowance u/s. 40(a)(iib) of the Act. In order to fortify his aforesaid contention, the Ld. AR had taken us through the “Sr. No.8, Part A (i) of the return of income”, which duly supported his aforesaid claim.

11. Controversy involved in the present appeal lies in a narrow compass ,i.e., sustainability of the disallowance of the assessee’s claim for deduction of “VAT” on sale of liquor. As observed by us hereinabove, the Pr. CIT holding a conviction that the “VAT” claimed by the assessee which was liable for disallowance u/s.40(a)(iib) of the Act was summarily allowed by the A.O, thus, vide his order passed u/s.263 of the Act, dated 28.03.2021 had set-aside the order passed by the A.O u/s.143(3), dated 30.10.2017, and directed him to disallow the amount of Rs.53.65 crore (supra) that was claimed as deduction by the assessee company.

12. We have given a thoughtful consideration to the aforesaid issue in hand, and find substance in the claim of the Ld. AR that the issue involved in the present appeal is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT, Circle-1(1), Civil Appeal No.11 of 2022 (SC) dated 03.01.2022. As stated by the Ld. AR, and, rightly so, the Hon'ble Apex Court had approved the view taken by the Hon'ble High Court of Kerala that as "surcharge on sales tax" is a "tax", and Section 40(a)(iib) does not contemplate "tax", and surcharge on sales tax is not a "fee" or a "charge", therefore, no disallowance under the said statutory provision was called for in the hands of the assessee. For the sake of clarity the relevant observations of the Hon'ble Supreme Court are culled out as under:

"16. For the aforesaid reasons, we hold that the gallonage fee, licence fee and shop rental (kist) with respect to FL-9 and FL-1 licenses granted to the appellant will, squarely fall within the purview of Section 40(a)(iib) of the Income tax Act, 1961. The surcharge on sales tax and turnover tax, is not a fee or charge coming within the scope of Section 40(a)(iib)(A) or 40(a)(iib)(B), as such same is not an amount which can be disallowed under the said provision and disallowance made in this regard is rightly set aside by the High Court."

At this stage, we may herein observe, that in the case before the Hon'ble Apex Court it was observed that now when the assessee's claim for deduction of sales tax was allowed by the department, therefore, there was no justification in declining the said claim qua the surcharge levied on the

same. In sum and substance, in its aforesaid order, the Hon'ble Apex Court had observed that "tax" unlike "gallonage fee", "license fee" etc. would not fall within the realm of the disallowances contemplated u/s.40(a)(iib) of the Act. In so far the claim of the Ld. DR that the term "VAT" is a misnomer, as the same in substance is not a "tax" but "license fee", "privilege fee" etc. which in the preceding years was collected by the State Government from the assessee company, and that the change in the nomenclature to such collection was prompted with an ulterior motive to evade the rigors of disallowance contemplated under sub-clause (iib) of Section 40(A) of the Act that was made available on the statute vide the Finance Act, 2013 w.e.f. 01.04.2014, we are unable to persuade ourselves to subscribe to the same. We, say so, for the reason that the term "Value Added Sales Tax" (VAT) as defined under Section 2(z) of the Chhattisgarh Value Added Sales Tax Act, 2003 clearly provides that the same would mean tax on sale or purchase of goods payable under the Act. As "VAT" levied by the State Government of Chhattisgarh on the assessee company is admittedly a "tax", therefore, we are of the considered view that the same pursuant to the judgment of the Hon'ble Supreme Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT, Circle-1(1), Civil Appeal No.11 of 2022 (SC) dated 03.01.2022 could not have been brought within the realm of the disallowance contemplated u/s. 40(a)(iib) of the Act.

13. At this stage, we may herein observe, that as stated by the Ld. AR, and, rightly so, the reliance placed by the Pr. CIT on the judgment of the Hon'ble High Court of Kerala in the case of Kerala State Beverages (Manufacturing and Marketing) Corporation Limited Vs. ACIT, Circle-1(i), Trivandrum (2020) 116 taxmann.com 555 (Kerala) is absolutely misconceived and in fact, misplaced in the context of the issue involved in the present case before us. In the case before the Hon'ble High Court, it was observed that "gallonage fee" that was paid by the assessee before them being in the nature of a levy was liable for disallowance u/s.40(a)(iib) of the Act. As observed by us at length hereinabove, the aforesaid judgment of the Hon'ble High Court of Kerala had thereafter been approved by the Hon'ble Supreme Court in the case of Kerala State Beverages Manufacturing & Marketing Corporation Ltd. Vs. ACIT, Circle-1(1), Civil Appeal No.11 of 2022 (SC), dated 03.01.2022, and the Hon'ble Apex Court had categorically observed that though the "gallonage fee", "license fee" etc. paid by the assessee would fall within the purview of Section 40(a)(iib) of the Act, but the same would not be the position in so far the payment of "tax" was concerned. Considering the aforesaid judgment of the Hon'ble Apex Court, we are of the considered view that the same in fact supports the claim of the assessee that the provisions of Section 40(a)(iib) would not be applicable to the case of the assessee qua the "VAT" paid by the assessee company. We, thus, in terms of our aforesaid observations set-

aside the order passed by the Pr. CIT u/s.263 of the Act, dated 28.03.2021, and restore the order of the A.O passed u/s.143(3), dated 30.10.2017 to the extent he had allowed the assessee's claim for deduction of "VAT" of Rs.53.65 crores (supra.)

14. As we have vacated the direction given by the Pr. CIT u/s.263 of the Act, dated 28.03.2021 to the A.O for disallowing the assessee's claim for deduction of "VAT" of Rs.53.65 crore (supra), therefore, we refrain from adverting to the other contentions that have been advanced by the Ld. AR qua the validity of the jurisdiction that was assumed by the Pr. CIT u/s.263 of the Act, which, thus, are left open.

15. In the result, the appeal of the assessee in ITA No.38/RPR/2021 for the assessment year 2015-16 is allowed in terms our aforesaid observations.

ITA Nos. 39 & 40/RPR/2021
A.Ys. 2016-17 & 2017-18

16. As the facts and the issues involved in the captioned appeals qua the merits leading to the disallowances of assessee's claim for deduction of 'VAT' u/s. 40(a)(iib) of the Act remains the same, as were there before us in ITA No.38/RPR/2021 for the assessment year 2015-16, therefore, the order therein passed, to the said extent, shall mutatis-mutandis apply for the purpose of disposal of the captioned appeals.

17. At this stage, we may herein observe that the assessee had also assailed the validity of jurisdiction assumed by the Pr. CIT u/s.263 of the Act, wherein he had directed the A.O to disallow the assessee's claim for deduction of "VAT" u/s.40(a)(iib) of the Act, for the reason, that now when no such disallowance could have been made vide an intimation issued by the A.O u/s.143(1) of the Act, therefore, the Pr. CIT could not have been expanded the scope of jurisdiction vested with the A.O pursuant to his aforesaid direction issued in the garb of his jurisdiction u/s 263 of the Act. In sum and substance, it was the claim of the Ld. AR that what could not have been directly disallowed by the A.O u/s.143(1) of the Act, could not have been indirectly disallowed in the garb of exercise of revisional jurisdiction by the Pr. CIT u/s. 263 of the Act. However, as we have vacated the direction of the Pr. CIT to the A.O to disallow the assessee's claim for deduction of "VAT" u/s.40(a)(iib) of the Act, therefore, we refrain from adverting to and adjudicating the aforesaid claim of the assessee on the basis of which he has assailed the validity of jurisdiction that was assumed by the Pr. CIT u/s.263 of the Act, which, thus, is left open.

18. In the result, appeals of the assessee in ITA Nos.39 & 40/RPR/2021 for the assessment years 2016-17 & 2017-18 are allowed in terms our aforesaid observations.

19. In the result, all the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 12th December, 2022

***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1,Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.