

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
A N D
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 1445/Del/2018
निर्धारणवर्ष /Assessment Year : 2013-14

Paschimanchal Vidyut Vitran Nigam Ltd., C/o. Advocate Vinod Kumar Goel, 200, Western Kutchery Road, Meerut.	<u>बनाम</u> Vs.	DCIT, Circle : 2, Meerut.
PAN No. AAACP5610N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Shri Pranav Gupta, C. A.;
राजस्वकीओरसे/Department by:	Shri T. Kipgen, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	21/11/2022
उद्घोषणाकीतारीख/Pronouncement on :	09/02/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the
ld. Commissioner of Income Tax (Appeals) [hereinafter referred

to CIT (Appeals)] Meerut, dated 27.12.2017 for the assessment year 2013-14 in sustaining the disallowance made under section 43B of the Income Tax Act, 1961 (the Act) in respect of Electricity Duty payable.

2. The Id. Counsel for the assessee submits that identical issue has been decided by the Tribunal in its own case for the assessment years 2014-15 and 2015-16. The Id. Counsel placed copy of the order for the assessment year 2014-15 in ITA. No. 7146/Del/2017 dated 2.11.2020 wherein the Tribunal followed its earlier order passed for the assessment year 2015-16 in ITA. No. 4980/Del/2018 in assessee's own case dated 16.01.2020 and allowed the appeal of the assessee.

3. The Id. DR placed reliance on the orders of the authorities below.

4. Heard rival submissions perused the orders of the authorities below. On perusal of the order of the Tribunal in assessee's own case for the assessment year 2014-15 in ITA. No. 7146/Del/2017 dated 2.11.2020 we find that identical issue has been decided by the Tribunal in assessee's favour for the immediately succeeding assessment years i.e. 2014-15 and 2015-16 holding that no disallowance is warranted under section 43B of the Act in respect of Electricity Duty payable by the assessee. The Tribunal in the order passed for the assessment year 2014-15 held as under:-

“9. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance u/s 43B. We find that identical issue arose in Assessee’s own case in A.Y. 2015-16 and the Co-ordinate Bench of the Tribunal decided the issue by observing as under:-

14. *“We have heard the rival submissions and perused the material available on record. We find that the section 4 and 5 of the Electricity Duty Act 1963 reads as under:*

“(4) Every consumer belonging to any of the classes specified in column (2) of the Schedule shall pay every month to the Government in the prescribed manner a duty calculated at the rate specified against that class in column(3) thereof:

Provided that in cases where the supply of energy to a consumer is regulated by an agreement entered into between the Government or the licensee and the consumer it shall be competent for the government either to reduce the rate at which duty is leviable on such consumer or to exempt such consumer from payment of duty under this section subject to, such terms and conditions as maybe imposed by the Government.

(5) Every licensee shall collect and pay to the Government at the time and in the manner prescribed, the Electricity Duty payable u/s.4 of this Act on the units of energy consumed by every consumer supplied by him the duty so payable shall amount recoverable by the licensee in be a debt due by him

16. *Thus, as per section 4 of the such Act the duty is levied on the consumer of electricity specified in column 2 of the schedule and u/s.5 of the Act, the assessee is obliged to collect from the consumers above mentioned duty and pay to the Government at the time and in the manner as prescribed*

by the rules, thus we find that the Electricity Duty collected on behalf of the Government of Uttar Pradesh as their agent and credited to the State Government Account periodically as directed by the State Government. Sometimes, the duties also adjusted against the subsidy received by the assessee from the Government of Uttar Pradesh. Thus, the amount so collected as electricity Duty is not air tax payable by the assessee but the same is amount collected by the assessee as the agent of State of Uttar Pradesh, therefore, this does not amounts any sum payable by the assessee by way of tax duty or fee by whatever name called under any the tithe being in force as-provided u/s.43B(a) of the Act. We further find that the issue is squarely covered in favour of the assessee by the decision of Honble Kerala High Court in the case of Kerala State Electricity Board vs. DCIT [2010J 329 ITR 91 (Kerala) wherein the Hon'ble Kerala High Court has held in para 23 to 27 as under:

...“23. Coming to the next question of whether Section 43B of the Act

.....

We are therefore of the opinion that Section 43B cannot be invoked in making the assessment of the liability of the appellant under the Income Tax Act with regard to the amounts collected by the appellant pursuant to the obligation cast on the appellant under Section 5 of the Electricity Duty Act, 1963.”

17. Thus, in the light of above decision, we find that the assessee has collected amount as agent on behalf of State of Uttar Pradesh pursuant to the statutory obligation to collect such an amount only as agent of the Government of Uttar Pradesh, as per provisions of Section 4 & 5 the Electricity Duty Act, 1963, therefore, the same is not covered under Clause u/s. 43B(a) of the Act as the any sum payable by the assessee by way of tax duty which means the tax is the indicative of nature of liability. Therefore, the obligation of the assessee being an agent of Uttar Pradesh Government the amount collected by duty is in the fiduciary capacity, therefore, respectfully following the principle laid down in the aforesaid decision, we allow the appeal of the assessee on this ground.”

10. Before us, no distinguishing feature in the facts of the case under the year under consideration and that of A.Y. 2015-16 has been pointed out by the Revenue but however Revenue has placed reliance on the decisions of Hon'ble Gujarat High Court cited herein above. It is a settled legal position that the rule of consistency is required to be followed by the Income-tax authorities and that in the absence of any difference in the facts and circumstances of the case for the assessment year under consideration, the Assessing Officer is not justified in disallowing the claim. Further, Revenue has also not placed any material on record to demonstrate that the order of the Co-ordinate Bench of Tribunal passed in the case of assessee for A.Y. 2015-16 has been stayed/ set aside or overruled by higher judicial forum. In such a situation, following the rule of consistency and following the order of the Tribunal in the assessee's own case for A.Y. 2015-16 and for similar reasons hold that AO was not justified in disallowing the expenditure by invoking the provisions u/s 43B. We therefore, set aside the order of CIT(A) and **thus the ground of appeal of the assessee is allowed.**"

5. For the same reasoning, as was held by the Tribunal for the assessment year 2014-15, we hold that the Assessing Officer is not justified in disallowing the Electricity Duty payable invoking the provisions of section 43B of the Act. Therefore, we set aside the order of the Id. CIT (Appeals) and allow the appeal of the assessee.

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

Order pronounced in the open court on : 09/02/2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 09/02/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	01.02.2023
Date on which the typed draft is placed before the dictating Member	02.02.2023
Date on which the typed draft is placed before the Other Member	09.02.2023
Date on which the approved draft comes to the Sr. PS/PS	09.02.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	09.02.2023
Date on which the fair order comes back to the Sr. PS/PS	09.02.2023
Date on which the final order is uploaded on the website of ITAT	09.02.2023

Date on which the file goes to the Bench Clerk	09.02.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	