

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

**Before Sh. C. M. Garg, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2949/Del/2018 : Asstt. Year : 2014-15

BPTP Parklands Pride Ltd, M-11, Middle Circle, Connaught Circus, New Delhi (APPELLANT)	Vs	Addl. CIT, Range-5, New Delhi (RESPONDENT)
PAN No. AACCD4540P		

Assessee by : Sh. Ajay Bhagwani, CA

Revenue by : Sh. P. Praveen Sidharth, CIT DR

Date of Hearing: 06.02.2023

Date of Pronouncement: 07.02.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-2, New Delhi dated 07.12.2017.

2. The only issue involved in the appeal before us pertains to payment of External Development Charges (EDC) and Internal Development Charges (IDC) and disallowance u/s 43B by the AO treating them charges paid under the category "Fee". Ld AR relied on the order of the Tribunal in case of Vipul Ltd in ITA No. 4866/Del/2019 for the AY 2013-14, wherein one of the members of the Bench is the signatory, whereas, the Id CIT DR relied upon the judgment of Hon'ble Supreme Court of India in case of CIT, Kerala Vs. M/s. Travancore Sugars & Chemicals Ltd dated 07.05.2015.

3. Heard the arguments of both the parties and perused the material available on record.

4. On perusal we find that the judgment of CIT, Kerala Vs. M/s. Travancore Sugars & Chemicals Ltd (supra) is not applicable to the facts of the case as the judgment dealt with vend fee in case of foreign liquor sell involved in the issue of Karnataka Excise Act 1965 read with section 43B of the Income Tax Act.

5. For the sake of ready reference the relevant part of the order in the case of Vipul Ltd (supra) is reproduced as under:-

"11. In the present case, from the Rules under which payments have been made by the assessee and the order of the AO, TDS, it is amply clear that it is a charge paid by the developer and builder for obtaining the services from the HUDA authority like sewage, roads, lighting, etc. and in case the assessee does not avail such facility, he is entitled for refund or adjustment of payment. The AO himself noted that the payment of EDC to HUDA is subject to TDS @ 2% u/s 194C of the Act which clearly characterize the payment as made against the facilities availed by the developer/builder/colonizer which cannot be put in the basket of mandatory or compulsory payment of duty, tax, cess or fee, therefore, section 43B of the Act does not stand attracted in the present case to the payment of EDC by the assessee.

12. In view of the foregoing, once we come to the conclusion that section 43B of the Act does not apply to the payment of EDC, the question of applying the rigor of payment within the time schedule viz., before filing the return of income u/s 139(1) of the Act will not decide the allowability or otherwise of such payment u/s 143B of the Act. It is pertinent to note that the allowability of such payment would then depend upon the method of accounting followed by the assessee and if the assessee has made provision for its payment in its books of account and has claimed it as accrued liability in the relevant financial period, then, he is entitled to get the deduction in

the relevant assessment year itself without any bar or application of section 43B of the Act.”

6. Since the facts in the case akin to the issue adjudicated as above, we hereby hold that the payment of EDC and EDC do not attract the provisions of section 43B of the Act.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 07/02/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 07/02/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR