

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 375/JP/2022
निर्धारण वर्ष / Assessment Year : 2020-21.

Venus Footarts Ltd., Industrial Area, Neem Ka Thana, Sikar.	बनाम Vs.	Dy. Commissioner of Income-tax, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AACCV 2248 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani, CA &
Ms. Shivangi Samdhani, CA

राजस्व की ओर से / Revenue by : Shri Mirza Azhar Beig, JCIT

सुनवाई की तारीख / Date of Hearing : 24/01/2023
उदघोषणा की तारीख / Date of Pronouncement: 22/02/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 29.07.2022 of Id. CIT (A)-4, Jaipur for the assessment year 2020-21. The assessee has raised the following grounds of appeal :-

1. In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO of making the adjustments in the intimation under section 143(1) which are outside the purview of section 143(1)(a). The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire disallowance of Rs. 24,26,283/-.
2. In the facts and circumstances of the case and in law, Id. CIT (A) has erred in confirming the action of Id. AO of making disallowance of Rs. 1207/- and Rs. 24,25,076/- being of TCS and TDS

respectively. The action of the Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance of Rs. 24,26,283/-.

3. The assessee craves its right to add, amend or alter any of the grounds on or before the date of hearing.

2. The brief facts of the case are that the assessee company is engaged in manufacturing of footwear under the brand name "Venus". Appellant company filed its return of income on 02.12.2020 declaring total income of Rs. 6,60,64,360/-. The return of the assessee company was processed under section 143(1) of the IT Act vide intimation dated 20.09.2021 wherein the AO (CPC) made disallowances amounting to Rs. 73,32,390/- and created a demand of Rs. 22,53,810/-. The AO Centralized Processing Centre (CPC) vide Intimation under section 143(1) dated 20.09.2021 while processing the return for the assessment year 2018-19 assessed the income of the appellant at Rs. 7,33,96,750/- by making additions of Rs. 73,32,390/- under section 36(1)(va) on the ground that the assessee deposited employee's contribution of Provident Fund beyond the due date specified under PF Act although the same was deposited before the due date of filing tax return. On appeal, the Id. CIT (A), partly allowed the appeal of the assessee. Being aggrieved by the order of the Id. CIT (A), the assessee has preferred the present appeal before this Tribunal.

3. For the sake of convenience, I first take up **ground no. 2** for adjudication on merits. This ground relates to confirming the action of Id. AO of making disallowance of Rs. 1207/- and Rs. 24,25,076/- being of TCS and TDS respectively.

4. Before me, the Id. A/R for the assessee submitted her written submissions as under :-

“ 1.1. Section 43B of the Act reads as under:

Section 43B: Certain deductions to be only on actual payment.

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

.....

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return..." [Emphasis Supplied]

1.2. TDS and TCS are not in the nature of tax, duty, cess or fess. Therefore, are not covered u/s 43B and auditor has made wrong reporting of the same under clause 26.

1.3. Even if it is considered that TDS and TCS are covered under the purview of section 43B then also no disallowance can be made as the auditor categorically reported that payment was made before the due date of filing of return. Proviso to section 43B covers such situation and provides that the payments made before the due date of filing of return shall stand allowed.

1.4. The disallowance, if any, on account of TDS and TCS can be made u/s 40(a)(ia) which reads as under:

Section 40: Amounts not deductible.

"Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

....

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid..." [Emphasis Supplied]

1.5. The proviso to section 40(a)(ia) also provide that if the payment has been made before the due date of furnishing of return u/s 139(1) then no disallowance can be made.

1.6. In the present case there is no dispute about the fact that payment of TDS and TCS was made before the due date as per the report of the auditor.

1.7. Further, the auditor in clause 21(ii) have not reported any disallowance which has to be made u/s 40(a)(ia) **[PB 6-7]**.

1.8. Hence, under both the section i.e. section 43B and section 40(a)(ia) no disallowance of expense can be made because the assessee company made the payment before the due date of filing of return of income.

1.9. The assessee company disputed the disallowance in appeal before Id. CIT(A). Id. CIT(A) at pages 7-8 of her order appreciated that TDS and TCS are not covered by the provisions of section 43B, however, fell in error in not taking note of the provisions of section 40(a)(ia). Gross misconception of the law resulted into confirmation of disallowance.

1.10. In the view of above legal and factual position it is submitted that the disallowance made by Id. AO and confirmed by Id. CIT(A) is illegal.

In view of above relief may please be provided to the assessee company by quashing the disallowance.”

5. On the other hand, the Id. D/R supported the orders of the Revenue Authorities.

6. I have heard Id. Counsels for both the parties, perused the materials available on record and gone through the orders of the revenue authorities. The Bench noted that the assessee filed its return of income which was processed u/s 143(1) of the I.T. Act, 1961 with an adjustment made on account of provisions of section 43B amounting to Rs. 24,26,283/-. The admitted fact of the present case is that such amount being amount of TDS and TCS was reported under Clause 26(1)(B)(a) by the auditor wherein he mentioned that such liability was paid before the due date of filing of return. Before deciding the matter, let us look into the provisions of section 43B:

Section 43B: Certain deductions to be only on actual payment.

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

(b) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

.....

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

Provided that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return... [Emphasis Supplied]

I note that TDS and TCS are not in the nature of tax, duty, cess or fess. Therefore, the same are not covered u/s 43B. Further, as reported by the auditor the payment of the TDS and TCS were made before the due date of filing of return. Proviso to section 43B covers such situation and provides that the payments made before the due date of filing of return shall stand allowed. Hence, no disallowance can be sustained. Late payment of TDS and TCS results into disallowance u/s 40(a)(ia) which also provides that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid. Therefore, even as per the provisions of section 40(a)(ia) no disallowance can be made because the payment admittedly was made before the due date of furnishing of return u/s 139(1). Further, the Id. A/R of the assessee has drawn my attention to the fact that the auditor in clause 21(ii) have not reported any disallowance u/s 40(a)(ia).

6.1. By considering totality of facts and circumstances of the case, I am of the view that no disallowance can be made since the payment was made to the exchequer before the due date of filing of return of income. Hence, the ground of appeal raised by the assessee stands allowed.

Ground No. 1 relates to confirming the action of the AO of making the adjustments in the intimation under section 143(1).

7. This ground is a legal ground challenging adjustment made u/s 43B while processing the return u/s 143(1). Since the appeal of the assessee is allowed on merits, there is no need to adjudicate this ground of appeal.

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

Order pronounced in the open court on 22/02/2023.

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/02/2023.

Das/

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

1. अपीलार्थी / The Appellant- M/s. Venus Footarts Ltd., Neem Ka Thana.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 375/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

