आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR

श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 169/RPR/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Payal Verma
M/s. Jai Vriddhi Traders,
Ananj Mandi Line, Behind Nehru Bhawan,
Supela Bhilai-490023 (C.G.)
PAN : AOVPV3159G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(3), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Shyamsundar Sharma, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 09.03.2023
घोषणा की तारीख / Date of Pronouncement : 14.03.2023

आदेश / ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 14.07.2022, which in turn arises from the order passed by the A.O, CPC (Central Processing Center) under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 17.05.2019 for the assessment year 2018-19. The assessee has assailed the impugned order on the following grounds of appeal:

> "1. The learned NFAC erred in passing the order dated 14 July 2022 based on the surmise and conjecture. Accordingly, such order is bad in law and ought to be quashed.
>
> 2. The learned NFAC erred in not appreciating the facts of the appellant's case and hence the basis on which the proceedings are completed is not in accordance with the law.
>
> **Ground No.3-Disallowance under section 43B-Rs. 25,06,246**
>
> 3.1 The learned NFAC erred in upholding the disallowance of Rs.25,06,246 in terms of provisions of section 143(1) of the Act in the Intimation by invoking provisions of section 43B.
>
> 3.2. In the facts and circumstances of the case the learned NFAC ought to have appreciated that provisions of section 43B are not applicable to the appellant and hence disallowance of Rs. 25,06,246 cannot be made under section 43B.
>
> 3.3. The learned NFAC erred in not considering the fact that the amount of Rs.25,06,246, in respect of VAT payable even though reported in clause 26A of the TAR was not debited to

the profit & loss A/c or passed through the profit & loss A/c to claim it as revenue expenditure.

3.4. The appellant submits that considering the prevailing legal position on the issue, the provisions of section 43B are not applicable to the facts and circumstances of the case and the contrary stand taken by the NFAC/AO in this regard is erroneous, incorrect and bad in law.

3.5. The learned NFAC failed to appreciate that the appellant follows exclusive method of accounting. Hence, the NFAC erred in observing that VAT charged and collected from the buyer forms part of total sales/ turnover of the appellant.

3.6. The learned NFAC ought to have appreciated that Tax Auditor had categorically mentioned in the Tax Audit Report that there is no impact on the profit of the appellant based on the method of accounting followed by the appellant.

3.7. The learned NFAC erred in observing that VAT collected by the appellant but not paid to the Government account forms part of cash credit and the appellant has not paid income tax on the same.

3.8. The appellant submits that the learned NFAC/AO be directed to delete the disallowance made under section 43B with respect to VAT payable of Rs. 25,06,246 and to compute total income and tax thereon accordingly.

Ground no.4 — Excess levy of interest under section 234A

4.1. The learned NFAC erred in not adjudicating on the ground of levying excessive interest under section 234A of the Act at Rs.8,490 as against correct amount of Rs.746 as computed by the appellant in the return of income.

Ground no.5 — Excess levy of interest under section 234B

5.1. The learned NFAC erred in not adjudicating on the ground of levying excessive interest under section 234B of the Act at Rs.1,18,860 as against correct amount of Rs.5,222 as computed by the appellant in the return of income.

Ground no.6 — Erroneous levy of interest under section 234C

6.1. The learned NFAC erred in not adjudicating on the ground of erroneously levying interest under section 234C of the Act at Rs.44,002 as against Nil computed by the appellant in the return of income.

6.2 The learned NFAC ought to have appreciated that as per section 234C of the Act, interest must be computed on the tax due on returned income and not on the assessed income.

General

7. Each one of the above grounds of appeal is without prejudice to one another.

8. The appellant craves leave to add, alter or amend the grounds of appeal."

2. Succinctly stated, the assessee who is engaged in the business of trading of cigarettes, pan masala, tea and cardamom had e-filed her return of income for A.Y.2018-19 on 17.10.2018, declaring an income of Rs.11,83,810/-. The return of income filed by the assessee was processed as such u/s.143(1) of the Act on 17.10.2018, wherein after, inter alia, making an addition u/s. 43B of the Act of the VAT payable by the assessee of Rs.25,06,246/- her net taxable income was determined at Rs.35,48,770/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without success in so far the aforesaid issue under consideration was concerned. The CIT(Appeals) upheld the addition of VAT payable u/s.43B of the Act by observing as under:

"5.4. The reply of the appellant and the case laws relied on by the appellant have duly been considered. All the case laws relied on by the appellant have considered, among other issues, the issue of disallowance u/s.43B of the Income Tax Act.

5.4.1. The appellant deals in Cigarettes, Pan masala, Tea etc.

5.4.2. It is common knowledge and known to all consumers that while purchasing Cigarettes. Pan masala, Tea all the consumers pay VAT/GST/Sales tax to the seller.

5.4.3. The appellant while purchasing Cigarettes, Pan masala, Tea from the producers/whole sale dealers /distributors would have paid VAT/GST/Sales tax to the sellers. Similarly the appellant while making sales would have charged and collected VAT/GST/Sales tax from the buyers. Therefore VAT/GST/Sales tax charged and collected by the appellant from the buyers forms part of total sales/turnover of the appellant.

5.4.4. Nonpayment of VAT/GST/Sales tax charged and collected from the buyers to the Government account may not entitle the deduction u/s 43 B of the Income Tax Act. But, ipso facto, VAT/GST/Sales tax charged and collected from the buyers forms part of total sales/turnover of the appellant. Ergo, there is merit in the addition made of Rs.25,06,246/-in the order u/s143(1) dated 17.05.2019 and the same is hereby CONFIRMED.

5.5. With due respect to the case laws relied on by the appellant, it is hereby held that the same are not applicable to this appeal as the facts of case laws relied on by the appellant are different from the facts of the case of appellant.

5.6. In the statutory audit report-Form 3 CB/3CD, the duly qualified Charted Accountant Shri. Shri Hari Om Mishra, membership no.087129,in S.No.26(1)B(b)has mentioned VAT tax Liability of Rs.25,06,246/- has not been paid on or before the due date section for furnishing the return of income of the previous year under 139(1). Ergo, it is clear that the appellant has collected VAT but not paid into Government account. Ergo, on this turn over of Rs.25,06,246/-the appellant has not paid Income Tax. In other words VAT collected by the appellant but not paid into Government account forms part of cash credit and the appellant has not paid the Income Tax on the same. Therefore there is merit in the addition made of Rs.25,06,246/-in the order u/s.143(1) dated 17.05.2019 and the same is hereby CONFIRMED. Goes without saying, as and when the appellant pays Rs.25,06,246/-, deduction u/s 43B would be allowed as deduction."

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

5. I 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.

6. Controversy involved in the present appeal has two facet, viz. (i) that as to whether or not the lower authorities were justified in law and the facts of the case in making/sustaining the addition towards VAT tax liability of Rs.25,06,246/- which was not paid on or before "due date" for furnishing of her return of income for the year under consideration u/s.139(1) of the Act, despite the fact that the assessee who was accounting for her sales/turnover by following an "exclusive method" had not claimed deduction of the said amount in her profit and loss account for the year under consideration; and (ii) that even otherwise as to whether or not addition u/s.43B of the assessee's VAT tax liability could have justifiably been done u/s.143(1) of the Act.

7. I have given a thoughtful consideration to the issue in hand in the backdrop of the contentions advanced by the Ld. authorized

representatives of both the parties. At the very outset, I may herein observe that the **Hon'ble High Court of Chhattisgarh** in the case of **Assistant Commissioner of Income Tax-1, Bhilai, Dist. Durg (C.G.) Vs. M/s. Ganapati Motors, Tax Case (Income Tax Appeal) No.30 of 2016 dated 25.04.2017** had held, that in a case where the assessee had not charged VAT to its profit and loss account, then, despite the fact that the liability may still be unpaid it could not have been added u/s.43B of the Act as the same was not claimed as a deduction in the books of accounts. For the sake of clarity the relevant observations of the Hon'ble High Court are culled out as under:

> "2. Heard learned Counsel for the revenue and learned Counsel for the respondent-assessee. The fundamental issue that arises for decision is, as to whether a particular amount which is subject matter of the appeal is to be treated as relatable to Value Added Tax (VAT) payable by the assessee and, if so, whether it has to be actually paid by him before filing of the return under the Income Tax Act. This question is relevant, having regard to the manner in which the question of law has been framed. The issue as to whether Section 43-B of the Income Tax is attracted even when the assessee does not claim any deduction on the strength of that provision may also be relevant.
>
> 3. The Assessing Authority, on the instant issue, noticed that the assessee's claim regarding the treatment of VAT in the Books of Accounts has been verified from the Books and that has been found to be in order. The Assessing Authority also found that VAT has been found separately accounted for in the Books of Accounts. The only ground on which the Assessing Authority refused to exclude the VAT collected by the dealer from the profit of business is on the basis that the VAT component was not paid off on or before the due date for furnishing the return in relation to the previous year

under Section 139(1) of the Income Tax Act. The First Appellate Authority also noticed that it is an undisputed fact that the Appellant did not charge VAT to the Profit and Loss account. It was therefore noted by the First Appellate Authority that in such circumstances, the liability may still be unpaid, but it cannot be disallowed being not claimed as deduction in the Books of Accounts.

4. With the aforesaid fact situation, we are unable to hold that the Tribunal was in error in law in dismissing the revenue's appeal making a reference to the decisions referred to by it.

5. The decision of the Apex Court in Chowringhee Sales Bureau (P) Ltd. Vs. CIT, AIR 1973 SC 376 = (1973) 87 ITR 542, dealt with a case where the contents of the Profit and Loss account apparently showed that though the assessee had attempted to show that there is a separate account for tax collected, the collection would have been only of a composite amount. The transaction dealt with in Chowringhee's case (supra) related to auction and the nature of the income derived by an auctioneer in the process of auction. In contradistinction thereto, are the decisions of the High Court of Delhi in Commissioner of Income Tax v. Noble & Hewitt (India) (P) Ltd., 2008 305 ITR 0324, which make a nice distinction between Chowringhee's case and instances where Profit and Loss accounts and Service Tax accounts are maintained separately following mercantile system of accounting. As rightly noticed therein, it is not for the Income Tax department to make out a case relating to the correctness or otherwise of the mercantile system of accounting, resorted to and maintained by an assessee. The acceptability or otherwise of the accounts in a mercantile system would obviously be a matter of concern for other taxation authorities.

6. In the case in hand, as already noted, the fact situation that the Assessing Authority and the First Appellate Authority did not doubt the modality of the accounting system adopted by the assessee is an outstanding phenomenon which goes in favour of the assessee. Under such circumstances, it is not necessary for the authorities to consider, whether Section 43-B of the Income Tax is to be relied on by the assessee to claim any deduction.

7. For the aforesaid reasons, on the facts and circumstances of the case in hand, we answer to the question formulated in these appeals in the negative, that is to say, against the revenue and in favour of the assessee."

8. Considering the aforesaid judgment of the Hon'ble Jurisdictional High Court, as per which no addition can be made of an assessee's unpaid VAT tax liability which was not charged to the profit and loss account, there is substance in the claim of the Ld. AR that there was no justification for the A.O to have disallowed u/s.43B VAT payable of Rs.25.06 lac (approx.) as the same was not charged to the latters profit and loss account. I, say so, for the reason that as the aforesaid claim of the assessee was in conformity with the aforesaid judgment of the Hon'ble Jurisdictional High Court in the case of M/s. Ganapati Motors (supra), therefore, the same by no means could have been dubbed as an incorrect claim and brought within the realm of the adjustments contemplated in clause (a) of Section 143(1) of the Act. Accordingly, the order of the CIT(Appeals) is set-aside and the addition made by the A.O of VAT payable of Rs.25.06 lac (supra) is vacated.

9. In the result, appeal of the assessee is allowed in terms of my aforesaid observations.

Order pronounced in open court on 14th day of March, 2023

Sd/-

(**रवीश सूद /RAVISH SOOD**)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 14th March, 2023.

SB

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

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

आदेशानुसार / BY ORDER,

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निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur