

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1648/Kol/2019
Assessment Year: 2013-14

Asstt. Commissioner of Income Tax - Circle-2(1), Kolkata	Vs	M/s. Descon Ltd. Plot No. X -1,2,3, Block-EP, Sector V Salt Lake City Kolkata - 700091 [PAN : AAACD9410G]
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri P.P. Barman, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 25/01/2023
घोषणा की तारीख /Date of Pronouncement: 21/03/2023

आदेश/ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER :

This is the appeal preferred by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) - 16, Kolkata (hereinafter referred to as the Ld. CIT(A)"], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 26/03/2019 for the Assessment Year 2013-14.

2. The revenue has taken the following grounds of appeal:-

"1. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.56,07,000/- made by the AO on account of rent and connectivity charges as because the assessee follows the mercantile basis of accounting system and the expenses should be recorded as and when it arises.

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.33,82,434/- made by the AO on account of the employees contribution to PF/ESI as because it violates the provision of Sec.36(1)(va) read with Sec 2(24)(x) of the IT Act and it contradicts the Board's Circular No. 22/2015 dated 17.12.2015, Para No. 5 where it is clarified that "this Circular does not apply to claim of deduction relating to employee's contribution to welfare fund which are governed by Sec.36(1)(va) of the Act".

3. *In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO of Rs.80,00,000/- u/s 68 as because the assessee has failed to substantiate the genuineness of transaction and creditworthiness of the loan creditor company and summons u/s 131 of the IT Act issued to the assessee company for producing director of the creditor company was not complied with.*

4. *The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."*

3. In response to the notice of hearing, no one has come present on behalf of the assessee. Therefore, we adjudicate this appeal *ex-parte*, *qua* the assessee after hearing the Id. Departmental Representative.

4. Brief facts of the case are that the assessee company filed his return of income on 30/09/2013 disclosing total income at Rs.5,88,18,870/-. The case of the assessee was selected under CASS (Computer Aided Selection System) for scrutiny and notice u/s 143(2) of the Act was issued and served upon the assessee. The Id. AO after hearing the assessee passed the assessment order on 09/03/2016 and confirmed net taxable income of the assessee at Rs.3,65,49,320/- after making adjustment of brought forward depreciation.

5. Dissatisfied with the assessment order the assessee carried the matter in appeal before the Id. First Appellate Authority. It has challenged the additions which are deleted by the Id. CIT(A) in the impugned order and agitated by the revenue in its four grounds of appeal extracted *supra*.

6. With the assistance of the Id. Sr. D/R, we have gone through the record carefully. It is pertinent to note that sub-Clause (6) of Section 250 of the Act mandates the Id. CIT(A) to determine the points in dispute and thereafter, record reasons in support of its conclusions on these points. A perusal of the assessment order would indicate that Id. CIT(A) has not recorded any finding on the additions disputed before him. He just narrated

the written submissions of the assessee and thereafter did not record any finding. This amount was claimed by the assessee under the head prior period expenses. Accordingly to the assessee it is an expenditure incurred in the earlier year but crystallised in this year and, therefore, it is allowable. Now over this item, the finding of the Id. CIT(A) reads as under:-

"3. Submission:

1. "Ground No. 1: Prior period expenses

The appellant company during the year under appeal, settled and paid the disputed amount of Rs.56,07,000 as detailed in Appendix-11 of Tax Audit Report vide Page No 21 in the Paper Book and debited in the accounts for the asst. Year 2013-14. As the entire expenditure incurred for the purpose of the appellant's business only and ascertained and crystalised during the year under appeal, the entire amount should be allowed u/s 37(1) of the Act."

7. A perusal of the small paragraph would indicate that Id. CIT(A) has reproduced the submission and, thereafter took up the next ground but did not record any finding as to how this is allowable in this assessment year. The position in other grounds is also similar. In view of the above position, the impugned order is not sustainable and, therefore, we set aside the impugned order and direct the Id. CIT(A) to re-adjudicate all these issues. Since now the Id. CIT(A) has been functioning faceless, therefore, copy of this order be transmitted to the Assessing officer having jurisdiction over the assessee who will transmit the necessary record before the Competent Authority for allocation to the Id. CIT(A) for adjudication through new system.

8. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the Court on 21st March, 2023 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Kolkata, Dated 21/03/2023

**SC Sp/2*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata