

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 Nos. 146 to 148/RPR/2022

निर्धारण वर्ष / Assessment Year : 2017-18 to 2019-20

Ganeshan Puroshothaman Achari
116, Friends Arcade, Shastri Nagar,
G.E. Road, Supela, Bhilai (C.G.)
PAN : ACHPA6510E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax
CPC, Bengaluru.

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 24.03.2023

घोषणा की तारीख / Date of Pronouncement : 27.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 03.06.2022 and 02.06.2022, which in turn arises from the intimations passed by the Centralized Processing Center (CPC)/A.O under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 14.03.2019 and 23.01.2020 for assessment years 2017-18 to 2019-20. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.146/RPR/2022 for assessment year 2017-18 and the order therein passed shall apply mutatis mutandis for the purpose of disposing off the other appeal, i.e. ITA Nos.147 & 148/RPR/2022. The assessee has assailed the impugned order for A.Y.2017-18 on the following grounds of appeal before me:

“1. Ld. CIT(A) erred in confirming disallowance of Rs.5,33,962/-made by the AO u/s.43B on account of non-payment of VAT on or before due date of filing of return. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

2. Ld. CIT(A) erred in confirming disallowance of Rs.7,761/- on account of delayed payment of employees' contribution to ESIC & other welfare fund made by AO invoking sec. 36(l)(va). The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

3. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

3. At the very outset I find that all the captioned appeals filed by the assessee involves a delay of 11 days. It is the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that as certain time was involved in appointing a new Counsel by the assessee, therefore, for the said reason the appeals could not be filed within the stipulated time period. Elaborating further on the reasons leading to the delay in filing of the appeals, it was submitted by the Ld. AR that as at the fag end the time period available for filing of the appeals certain disputes had arisen between the assessee and the earlier counsel who had even failed to appear in the course of proceedings before the first appellate authority, therefore, the assessee was left with no other alternative but to engage a new counsel for filing of the appeal before the Tribunal. It was submitted by the Ld. AR that as certain time was involved in engaging a new counsel and delivering the records to him, therefore, the impugned delay had arisen in filing of the appeal. It was further submitted by the Ld. AR that as the delay in filing of the appeal had occasioned for

bonafide reasons and compelling circumstances over which the assessee had no control and not on account of any malafide intention or lackadaisical approach on his part, therefore, the same in all fairness did merit to be condoned.

4. Per contra, the Ld. Departmental Representative (for short 'DR') did not raise any objection to the seeking of condonation of the delay involved in filing of the captioned appeals by the assessee.

5. I have given a thoughtful consideration to the reasons leading to the delay in filing of the captioned appeals. The reasons given by the assessee for the delay in filing of the captioned appeals, i.e. time taken for engaging of a new counsel is supported by an affidavit dated 10.08.2022. Although an assessee is expected to be vigilant while pursuing his rights for filing of an appeal within the stipulated time period, but I also cannot remain oblivion of the fact that there can be certain reasons which being absolutely beyond the control of the appellant may result to some delay in preferring of the appeals. In the case before me, the assessee had not come up with any doctored reason for explaining the delay but had very fairly stated that the same had occasioned on account of certain circumstances due to which he was compelled to change his counsel. I am of the considered view that there is merit in the aforesaid claim of the

assessee that the delay of 11 days involved in filing of the captioned appeals which is not inordinate, was due to bonafide reasons and not on account of any lackadaisical approach or a malafide conduct on his part. I, thus, on the basis of my aforesaid observations condone the delay of 11 days involved in filing of the captioned appeals.

6. Succinctly stated, the assessee who is engaged in the business of trading and installation of air conditioners had e-filed his return of income for A.Y.2017-18 on 30.10.2017, declaring an income of Rs.11,18,100/-. The return of income filed by the assessee was processed as such u/s.143(1) of the Act on 14.03.2019, wherein after, inter alia, making an addition u/s.43B of the Act the "VAT payable" by the assessee of Rs.5,33,962/-, the A.O determined his net taxable income at Rs.17,08,910/-.

7. 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:

"7.5 In view of the aforesaid, there can be no doubt that unpaid VAT liability cannot be allowed for deduction u/s.43B read with section 145A of the Act. The case laws relied upon by the appellant in the cases of Asst. Commissioner of Income Tax Vs. Ganapati Motors (supra) and CIT Vs. Noble & Heweitt (India) (P) Ltd. (supra) would be of no moment here because in none of the two cases the provisions of section 145A were

either the subject matter or considered. Therefore, the ratio of these two case laws will have no application in the present case of the appellant for the elaborate reasons made hereinbefore. In this view of the matter, the action of the A.O in disallowing unpaid VAT liability amounting to Rs.5,33,962/- is hereby upheld and consequently, the ground No.1 is dismissed.”

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

9. 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.

10. Controversy involved in the present appeal has two facets, 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.5,33,962/- which was not paid on or before “due date” for furnishing of his 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 his sales/turnover by following an “exclusive method” had not claimed deduction of the said amount in the 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.

11. 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. 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.”

12. 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 that 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 made an addition u/s.43B of the amount of VAT payable of Rs.5,33,962/- as the same was not charged to the latter's 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.5,33,962/- is vacated. Thus, the **Ground of appeal**

No.1 raised by the assessee is allowed in terms of my aforesaid observations.

13. It was submitted by the Ld. AR that as per instructions, he is not pressing the Ground of appeal No.2. In view of the concession of the Ld. AR the **Ground of appeal No.2** is dismissed as not pressed.

14. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

15. In the result, appeal of the assessee in ITA No.146/RPR/2022 for A.Y.2017-18 is allowed in terms of my aforesaid observations.

ITA No.147/RPR/2022
A.Y.2018-19

16. I shall now take up the appeal filed by the assessee in ITA No.147/RPR/2022 for A.Y.2018-19, wherein the impugned order has been assailed by him on the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming disallowance of Rs.27,93,046/-made by the AO u/s.43B on account of non-payment of VAT on or before due date of filing of return. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

2. Ld. CIT(A) erred in confirming disallowance of Rs.4,094/- on account of delayed payment of employees' contribution to ESIC & other welfare fund made by AO invoking sec.36(l)(va). The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

3. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

17. Controversy involved in the present appeal has two facets, 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 aggregating to Rs.27,93,046/- towards, viz, (i) Entry tax : Rs. 4,386/- ; (ii) Service tax : Rs.1,83,115/-; and (iii) VAT tax liability : Rs.26,05,546/- which were not paid on or before the “due date” for furnishing of his return of income for the year under consideration as provided in sub-section(1) of Section 139 of the Act, despite the fact that the assessee who was accounting for his sales/turnover by following an “exclusive method” had not claimed deduction of the said amount in the 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 outstanding tax liabilities, viz. (i) Entry tax; (ii) Service tax; and (iii) VAT could have justifiably been done u/s.143(1) of the Act.

18. As the facts and the issue involved in the present appeal remains the same as were there before me in his appeal in ITA No.146/RPR/2022 for A.Y.2017-18, therefore, my findings recorded while disposing off the appeal in ITA No.146/RPR/2022 for A.Y.2017-

18 shall apply *mutatis-mutandis* for disposing off the present appeal, i.e, ITA No.147/RPR/2022 for A.Y.2018-19. Accordingly, the order of the CIT(Appeals) is set-aside and the addition made by the A.O on account of tax liabilities of Rs.27,93,046/- shown by the assessee as outstanding/payable in his balance sheet on 31.03.2018 towards, viz, (i) Entry tax : Rs.4,386/- ; (ii) Service tax : Rs.1,83,115/-; and (iii) VAT : Rs.26,05,546/- is vacated. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of my aforesaid observations.

19. It was submitted by the Ld. AR that as per instructions, he is not pressing the Ground of appeal No.2. In view of the concession of the Ld. AR the **Ground of appeal No.2** is dismissed as not pressed.

20. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

21. In the result, appeal of the assessee in ITA No.147/RPR/2022 for A.Y.2018-19 is allowed in terms of my aforesaid observations.

ITA No.148/RPR/2022
A.Y.2019-20

22. I shall now take up the appeal filed by the assessee in ITA No.148/RPR/2022 for A.Y.2019-20, wherein the impugned order has been assailed by him on the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming disallowance of Rs.17,79,654/-made by the AO u/s.43B on account of non-payment of VAT on or before due date of filing of return. The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

2. Ld. CIT(A) erred in confirming disallowance of Rs.3,090/- on account of delayed payment of employees' contribution to ESIC & other welfare fund made by AO invoking sec.36(l)(va). The disallowance made by AO and sustained by Ld. CIT(A) is arbitrary, baseless and not justified.

3. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

23. 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 of Rs.17,79,654/- towards GST which was not paid on or before “due date” for furnishing of his 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 his sales/turnover by following an “exclusive method” had not claimed deduction of the said amount in the 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 tax liability towards GST could have justifiably been done u/s.143(1) of the Act.

24. As the facts and issue involved in the present appeal remains the same as were there before me in the assessee’s appeal in ITA

No.146/RPR/2022 for A.Y.2017-18, therefore, my findings recorded while disposing off the appeal in ITA No.146/RPR/2022 for A.Y.2017-18 shall apply *mutatis-mutandis* for disposing off the present appeal, i.e, ITA No.148/RPR/2022 for A.Y.2019-20. Accordingly, the order of the CIT(Appeals) is set-aside and the addition made by the A.O on account of GST payable of Rs.17,79,654/- is vacated. Thus, the **Ground of appeal No.1** raised by the assessee is allowed in terms of my aforesaid observations.

25. It was submitted by the Ld. AR that as per instructions, he is not pressing the Ground of appeal No.2. In view of the concession of the Ld. AR the **Ground of appeal No.2** is dismissed as not pressed.

26. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

27. In the result, appeal of the assessee in ITA No.148/RPR/2022 for A.Y.2019-20 is allowed in terms of my aforesaid observations.

28. In the combined result, all the appeals of the assessee are allowed in terms of my aforesaid observations.

Order pronounced in open court on 27th day of March, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27th 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,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.