

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No. 85/RPR/2021
निर्धारण वर्ष / Assessment Year : 2012-13

Bhilai Jaypee Cement Ltd.
14-B, F- Pocket, Maroda Sector,
Bhilai Township, Bhilai,
Dist. Durg (C.G.)-490 006
PAN : AADCB1675Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rakesh Dhody, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.03.2023

घोषणा की तारीख / Date of Pronouncement : 28.03.2023

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 23.08.2021, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 20.03.2015 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. That CIT(A) erred in confirming disallowance of Rs.10,52,533/- made by Assessing Officer out of employees contribution to "Employee Provident Fund (EPF)" for the month of March, 2012 paid on 28.04.2012 as per Form No.3CD by alleging that as said contribution was paid after the due date specified in the "Employees' Provident Funds and Miscellaneous Provisions Act, 1952" therefore, it is not allowable under section 36(1)(va) by ignoring that payment of total contribution of March'2012 of Rs.20,78,458/- was cleared from SBI account no. 00000030197401979 on 13.04.2012, i.e. before due date of 15.04.2012, but due to mistake on the part of bank staff date of clearing of the cheque on challan was mentioned as 28.04.2012 and auditor had also on the basis of said mistake taken date of payment as 28.04.2012 in Annexure-3 to Form No. 3CD while reporting on clause 16(b).

2) That CIT(A) erred in holding that amendment made by Finance Act' 2021 in section 36(1)(va) and in section 43B by inserting Explanation-5 are clarificatory in nature and therefore, apply retrospectively and thereby confirming disallowance of Rs. 10,52,533/- made by AO out of employees contribution to "Employee Provident Fund (EPF)" for the month of March, 2012 paid on 28.04.2012 as per Form No. 3CD by alleging that as said contribution was paid after the due date specified in the "Employees' Provident Funds and Miscellaneous Provisions Act, 1952" therefore, it is not allowable under section 36(1)(va).

3) That CIT(A) erred in confirming action of Assessing Officer in allowing only credit of TDS/TCS of Rs.13,00,307/- in spite of the fact that TDS/TCS of Rs.13,08,590/- and tax payment of Rs. 33,520/- appearing in Form 26AS for the A.Y.2012/13, thus, less credit of tax payments was allowed.

4) That CIT(A) erred in not adjudicating following additional legal ground of appeal taken before him because interest u/s 234C was charged by the Assessing Officer in spite of assessing total loss of Rs.1,39,12,41,691/- and TDS/TCS of Rs.13,08,590/- & tax payment of Rs.33,520/- appearing in Form 26AS for the A.Y. 2012/13:-

"That Assessing Officer erred in charging interest u/s. 234C of Rs. 13,00,307/-".

5) The appellant reserves the right to add, amend, or alter any ground or grounds of appeal at the time of hearing."

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing of Clinker and Cement had e-filed its return of income for A.Y.2012-13 on 30.09.2012, declaring an income of Rs. Nil. i.e. claiming loss of Rs. (-)1,39,07,79,608/-. The assessee, thereafter filed a revised return of income declaring an income of Rs. Nil i.e. after claiming a loss of Rs.1,39,26,29,502/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. Assessment was, thereafter, framed by the A.O u/s. 143(3) dated 20.03.2015 determining the loss of the assessee at Rs. (-)139,22,94,224/- after making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Income not taken into consideration (as per Form 26AS)	Rs.1,49,868/-
2.	Disallowance of assessee's claim for deduction under the head gift	Rs.25,410/-
3.	Disallowance of assessee's claim under the head CSR	Rs.1,60,000/-
4.	Disallowance u/s. 36(1)(va) of the Act	Rs.10,52,533/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without success.

5. The assessee being aggrieved with the order CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties and perused the orders of the lower authorities as well as material available on record.

7. The Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that as per instructions, he is not pressing Ground of appeal Nos. 1 to 3. Accordingly, as per concession of the Ld. AR, the **Grounds of appeal Nos. 1 to 3** are dismissed as not pressed.

8. Adverting to the solitary ground of appeal No.4 that survives for adjudication, we find that the assessee has assailed the charging of interest by the A.O u/s.234C of the Act. It is the grievance of the assessee that despite the fact

that it had returned a loss of Rs.139,12,41,691/- and had paid taxes i.e. TDS/TCS of Rs.13,08,590/- a/w. tax payment of Rs.33,520/-, it was however, without any justification subjected to levy of interest u/s.234C of the Act of Rs.13,00,307/-. It was submitted by the Ld. AR that though the assessee had by way of a specific "additional ground of appeal" assailed the levy of interest u/s.234C of the Act before the CIT(Appeals), however, the latter despite taking cognizance of the said additional ground had grossly erred in not adjudicating the same. Our attention was drawn by the Ld. AR towards the "additional ground of appeal" that was raised by the assessee before the CIT(Appeals), Page 5 of the appellate order. It was, thus, the claim of the Ld. AR that the CIT(Appeals) had erred in not adjudicating the assessee's additional ground of appeal on the basis of which it had assailed the levy of interest u/s.234C of the Act.

9. Per contra, the Ld. Departmental Representative (for short 'DR') did not controvert the aforesaid contention of the assessee's counsel.

10. We have given a thoughtful consideration to the aforesaid contentions of the Ld. AR and find substance in the same. On a perusal of the order of the CIT(Appeals), it transpires that the assessee had specifically assailed the levy of interest u/s.234C of the Act of Rs.13,00,307/- by raising an additional ground of appeal before the first appellate authority. Reference of the aforesaid additional ground of appeal can be traced at Page 5 of the order of the CIT(Appeals).

However, we find that as stated by the Ld. AR and, rightly so, the CIT(Appeals) had failed to adjudicate the aforesaid additional ground of appeal so raised by the assessee. Considering the aforesaid factual position, we are of the considered view that the matter in all fairness requires to be restored to the file of the CIT(Appeals) with a direction to adjudicate the aforesaid additional ground of appeal that was raised by the assessee before him.

11. We, thus, in terms of our aforesaid observation set-aside the order of the CIT(Appeals) and restore the same to his file in terms of our aforesaid observations. Thus, the **Ground of appeal No.4** raised by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

12. In the result, appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
DR. DIPAK P. RIPOTE
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 28th 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), Raipur (C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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