

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.12/Chny/2021
निर्धारण वर्ष /Assessment Year: 2009-10

M/s.CEMA Electric Lighting Products, v. The Asst. Commissioner-
India Private Ltd., of Income Tax,
Ground Floor, No.5, Corporate Circle-1(2),
Nehru Nagar II Street, Adyar, Chennai.
Chennai-600 020.
[PAN: AACCC 9663 Q]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.B.Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 08.03.2023
घोषणा की तारीख /Date of Pronouncement : 31.03.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 29.03.2019 and pertains to assessment year 2009-10.

2. At the outset, we find that there is a delay of 610 days in filing of the appeal before the Tribunal, for which, a petition along with affidavit explaining reasons in delay in filing of the appeal has been filed. The Ld.Counsel for the assessee referring to petition filed by the assessee submitted that impugned order was received by the Accountant Mr.Biju,

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who failed to communicate the same to the management of the petitioner company. Later, on verification of outstanding demand in e-filing portal during the month of December, 2020 for verifying the eligibility of pending appeals for filing application under the Direct Tax Vivad Se Vishwas Act, 2020, it was understood that the demand pertaining to the subject re-assessment u/s.115WG of the Income Tax Act, 1961 (in short "the Act") was outstanding and further the order passed by the Ld.CIT(A) was reflecting in the portal as received on 24.04.2019. Later, the same was handed over to Mr.B.Ramakrishnan, for filing further appeal before the Tribunal and in the process, there is a delay of 610 days. However, said delay is neither intentional nor for wanton of any undue benefit. Therefore, in the interest of substantial justice, delay may be condoned.

2.1 The Ld.DR for the Revenue opposing the petition filed by the assessee for condonation of delay submitted that the assessee could not give any valid reasons for not filing the appeal within the time allowed under the Act and further, the reasons given by the assessee does not come under reasonable cause as provided for condonation of delay. Therefore, petition filed by the assessee should be dismissed.

2.2 We have heard both the parties and considered the contents of the petition filed by the petitioner for condonation of delay and we find that no litigant would derive any benefit by not filing the appeal against any adverse order passed by an authority. Further, the assessee has explained reasons for not filing the appeal and as per which, the person, In-charge of

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Accounts Department, did not notice order communicated by the First Appellate Authority through e-portal. On being verified pending issues in light of the Direct Taxes under VSVS, 2020, the assessee noticed that there is an outstanding demand in respect of AY 2009-10, which was unnoticed by the petitioner company. In our considered view, the reasons given by the assessee does come under reasonable cause, because ordinarily a litigant does not stand to benefit by lodging appeal late as held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst.Katiji reported in [1987] 1987 taxmann.com 1072 (SC). Therefore, we are of the considered view that the delay in filing of the appeal needs to be condoned for advancement of substantial justice and thus, the delay in filing of the appeal is condoned. The appeal filed by the assessee is admitted for adjudication.

3. The assessee has raised the following grounds of appeal:

1. For that the order of the Learned Commissioner of Income Tax (Appeals) - 1, Chennai u/s.250 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case.

2. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the re-opening of assessment by Assessing Officer under section 115WG of the Income Tax Act, 1961.

3. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of 20 percentage of the expenditure towards distributor Credit Notes Scheme amounting to Rs.1,23,70,835/- as taxable-fringe benefit u/s.115WB of the Act (Tax effect: Rs.42,04,847/-)

4. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming levy of interest under subsection 5 of section 115WJ consequent to the above addition.

5. For that the Learned Commissioner of Income Tax (Appeals) erred in confirming levy of interest under subsection 3 of section 115WJ consequent to the above addition.

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is prayed that the Hon'ble Tribunal may be pleased to delete the direction of the Commissioner of Income Tax (Appeals) towards addition of expenditure of distributor Credit Notes Scheme and/or pass such other orders as this Hon'ble Tribunal may deem fit.

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4. The brief facts of the case are that the assessee has filed its return of income for the AY 2009-10 on 22.09.2009 and returned a loss of Rs.21,27,61,541/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 29.11.2011 and accepted the loss returned by the assessee. During the course of assessment proceedings, it was noticed that the assessee has debited a sum of Rs.6,18,54,176/- under the head 'Distributors Credit Notes Scheme (in short "Distributors CRNs Scheme"). Therefore, the AO re-opened the assessment u/s.115WG of the Act, on the ground that the income chargeable to tax, has been escaped assessment and thus, issued notice u/s.115WG of the Act, and served on the assessee. During the course of assessment proceedings, the AO noticed that as per sec.115WB(2)(D) of the Act, which is a deeming provision to tax fringe benefits extended by the assessee whether or not any such activity is carried on with the object of deriving income from such fringe benefits should be taxed. Since, there is an amount debited in the P & L A/c in the nature of sales promotion expenses, the AO called upon the assessee to explain 'as to why' Fringe Benefit Tax shall not be levied on expenditure incurred towards 'Distributors CRNs Scheme'. In response, the assessee submitted that expenditure incurred towards 'Distributors CRNs Scheme' cannot be considered as deemed fringe benefits, because, any expenditure incurred for promoting the sale of goods and services of the business of the employer, was not to be considered as expenditure for the purpose of Fringe Benefits Tax. The AO, however, was not convinced with the

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explanation of the assessee and according to the AO, any expenditure incurred which is in the nature of sales promotion, does come under the provisions of Sec.115WB(2)(D) of the Act, and thus, rejected arguments of the assessee and computed Fringe Benefit Tax on total expenditure incurred towards 'Distributors CRNs Scheme'.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee explained the nature of expenditure debited into P & L A/c in light of its business and argued that said expenditure does not come under deeming provisions of Sec.115WB(2)(D) of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of relevant provisions, opined that although, the assessee claims to have incurred said expenditure in the course of sale of goods, but failed to furnish necessary evidences, including names and particulars of such persons, the payment made to them, and promotional activities carried out by them. In the absence of such particulars and evidences, the assessee claim under proviso (viii) to sec.115WB(2)(D) of the Act, is treated as inadmissible. Therefore, taken into account the nature of the expenses which is in the nature of sales promotion, including publicity upheld the additions made by the AO towards computation of Fringe Benefit Tax u/s.115WB(2)(D) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The Ld.AR for the assessee referring to certain documents, including scheme documents provided by the assessee company submitted that all

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claims are meant for customers mainly distributors. At the time of billing, company will price the products at normal selling price, and once the distributor pays the dues as per the credit terms, the company will issue free of cost items or credit notes to the distributors and these are in the nature of incentives paid to distributors for promoting the goods and thus, the same cannot be considered as Fringe Benefit within the meaning of Sec.115WB(2)(D) of the Act. In this regard, he relied upon the Circular No.8/2005 dated 29.08.2005 issued by the CBDT.

7. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that provisions of Sec.115WB(2)(D) of the Act, is a deeming provision, as per which, any expenditure incurred which is in the nature of sales promotions and publicity, then, the provisions of Fringe Benefit Tax will come into operation and the AO is bound to compute tax as per law. In this case, the assessee could not file any evidences to prove its claim that expenditure incurred is in the nature of free samples and credit notes given to distributors for price difference. Therefore, he submitted that there is no error in the reasons given by the Ld.CIT(A) to sustain the additions made by the AO towards Fringe Benefit Tax.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO has computed Fringe Benefit Tax in respect of payment made by the assessee under the head 'Distributors CRNs scheme'. According to the AO, provisions of Sec.115WB(2)(D) of the Act, is a deeming provision where any

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expenditure in the nature of sales promotion and publicity will come under the provisions of Fringe Benefit Tax. It was the explanation of the assessee before the AO that expenditure incurred under the head 'Distributors CRNs Scheme' as incentive paid to distributors of products in the form of free samples and credit notes given for adjusting price difference, which is nothing to do with any kind of benefit to the employees. Therefore, provisions of Sec.115WB(2)(D) of the Act, cannot be invoked. We find that the assessee has filed various evidences, including the scheme documents issued by the assessee company for the purpose of distributors for promotion of goods and also filed list of distributors to whom such benefit has been given. The assessee further referring to Circular issued by the CBDT dated 29.08.2005, claimed that expenditure incurred for the purpose of providing incentives given to distributors for meeting sales targets does not come u/s.115WB(2)(D) of the Act. We find that the CBDT clarifies by way of its Circular No.8/2005 dated 29.08.2005 and explained that incentives given to distributors for meeting sales targets are in the nature of performance based commission and such performance based commission is in the nature of ordinary selling cost. Therefore, expenditure incurred for the purpose of providing incentives to distributors for meeting sales targets does not fall within the scope of Clause (D) of sub-sec.2 of sec. 115WB of the Act. This legal proposition is also supported by the decision of the Hon'ble Karnataka High Court in the case of CIT v. Toyota Kirloskar Motor (P.) Ltd., reported in [2021] 430 ITR 65, where, it has been

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held that expenditure incurred on sales promotion and holding dealers conference does not come under the provisions of Fringe Benefit Tax, because, said expenditure is not incurred by the assessee for the purpose of employees or for benefit of employees. In this case, as per details submitted by the assessee, it appears that expenditure incurred under the head 'Distributors CRNs Scheme' is a type of incentive provided by the assessee to distributors for promotion of products manufactured and sold, which is nothing to do with benefits to employees. But, fact remains that the assessee could not file necessary evidences including name of persons to whom such payment is made. Further, the assessee has filed certain details including a list of parties to whom said payment is made for the first time before us. Therefore, we are of the considered view that the issue needs fresh examination from the AO in light of certain evidences filed by the assessee and thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO and direct the AO to re-examine the claim of the assessee in light of various evidences filed by the assessee and decide the issue in accordance with law.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 31st day of March, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

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चेन्नई/Chennai,
दिनांक/Dated: 31st March, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF