

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'D' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Kavitha Rajagopal (JM)

I.T.A. No. 176/Mum/2023 (A.Y.2016-17)

Multiples Alternate Asset Management Private Limited 701/A, Poonam Chambers B Wing, Dr. Anne Besant Road, Worli Mumbai-400 018. PAN : AAGCM0997F (Appellant)	Vs.	ACIT, CC-7(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Shailesh Parmar
Department by	Smt. Mahita Nair
Date of Hearing	23.03.2023
Date of Pronouncement	29.03.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 03.12.2022 passed by the learned CIT(A)-National Faceless Appeal Centre, Delhi and it relates to A.Y. 2016-17. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the disallowance of Rs. 1,28,33,352/- relating to the "provision for gratuity" made by the Assessing Officer in rectification order dated 9.7.2021 passed by him under section 154 of the I.T. Act.

2. The assessee company is engaged in providing asset management and investment advisory services to a private equity. The assessment in the hands of the assessee for the year under consideration was completed by the Assessing Officer under section 143(3) of the Act on 22.12.2018. Later it was noticed that the Tax auditor has mentioned in the tax audit report that the

employer's contribution to the gratuity fund amounting to Rs. 1,28,33,358/- is not allowable under section 43B of the Act. The Assessing Officer noticed that the assessee has not voluntarily disallowed the above said amount and the same was also omitted to be added in the assessment order. Accordingly, he took the view that there is mistake apparent from record in the order dated 22.12.2018 passed under section 143(3) of the Act in not making above said disallowance. Accordingly, he passed the impugned revision order dated 9.7.2021 adding the above said amount to the total income of the assessee. The learned CIT(A) also confirmed the same.

3. The Learned AR appearing for the assessee submitted that the Tax auditor has erroneously reported that the sum of Rs. 1,28,33,358/- as disallowable under section 43B of the Act and the same is contrary to the books of accounts. He submitted that the above said amount is the "accumulated provision for gratuity" shown as Liability in the Balance Sheet. Explaining it further, the Ld A.R submitted that the assessee has not claimed the above said amount as expenditure in the Profit and loss account. He contended that the question of disallowance may arise only if an amount is claimed as deduction. The Ld A.R further submitted that the assessee has debited a sum of Rs. 9,86,420/- only to the profit and loss account towards "Provision for gratuity". However, while computing the total income, the assessee has voluntarily disallowed the same, meaning thereby, the above said sum was also not claimed as deduction.

4. Besides the above, the assessee had also made payment of Rs.15,08,238/- to the LIC under Group gratuity scheme and the same was claimed as deduction while computing total income, since it is not required to be disallowed.

5. He further submitted that the provision for gratuity debited every year in the Profit and Loss account is accumulated and disclosed as liability in the Balance sheet. The amount of outstanding Liability towards “provision for gratuity” as on 31.3.2016 was Rs. 1,43,41,590/-.

6. The Learned AR submitted that the Tax auditor has erroneously considered the above said sum of Rs.1,43,41,590/- as the “provision for gratuity” debited to the profit and loss account. After setting of the payment made to LIC amounting to Rs. 15,08,238/-, the tax auditor has reported that a sum of Rs. 1,28,33,352/- in Clause 26(i)(B)(b) of the Tax Audit Report as the amount disallowable u/s 43B of the Act. In view of the report so given by the Tax auditor, the Assessing Officer has disallowed the above said sum of Rs.1,28,33,352/- in the impugned rectification order. The Learned AR submitted that the assessee cannot be subjected to tax by disallowing an amount, which was not claimed in the return of income as deduction. He further submitted that the error committed by the Tax auditor in the Tax audit report cannot be a reason for making the addition, since the role of the Assessing Officer is to determine correct total income of the assessee. Accordingly, he submitted that the Ld CIT(A) was not justified in confirming the above said addition of Rs. 1,28,33,352/- and hence the same is liable to be deleted.

7. The Learned DR, on the contrary, submitted that if there is a mistake in the tax audit report the assessee could have corrected the said mistake by filing revised Tax audit report. However, the assessee has not filed revised Tax audit report till date. The Ld D.R further submitted that the AO has made the disallowance as per the Tax audit report and hence the same cannot be found fault with.

8. We have heard the rival contentions and perused the record. It is the submission of the assessee that the impugned amount of Rs.1.28 crores has not been claimed as deduction in the return of income. There should not be any dispute that the disallowance of any expenditure can be made only if it was claimed as deduction while computing total income. We also agree with the contentions of the assessee that the error committed by the Tax auditor in the Tax audit report cannot be a ground for making addition, when the same is against the facts available in the books of account of the assessee. Hence, we are of the view that the Ld CIT(A) was not justified in confirming the addition made by the AO on the basis of erroneous reporting made in the Tax audit report.

9. However, we noticed that the above said factual aspects narrated by the learned AR have not been examined by the Assessing Officer. In our view, the assessing officer should verify the above said factual aspects and accordingly, this issue requires fresh examination. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer with the direction to examine this issue afresh by duly considering the information and explanations that may be furnished by the assessee and in the light of the discussions made supra.

10. The Learned AR has also raised a ground relating to the taxability of exempt dividend income. We noticed that the same does not form part of the rectification order passed by the Assessing Officer under section 154 of the Act or by the order passed by the learned CIT(A). When questioned about the same, the Ld A.R. submitted that the assessee has filed separate rectification application under section 154 in respect of this issue and the same has not been adjudicated by the Assessing Officer till date. Since the above said issue does not arise out of the impugned orders, we decline to adjudicate the

same. However, the Assessing Officer may dispose of the rectification application filed by the assessee under section 154 of the Act at the earliest.

11. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 29.3.2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 29/03/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS