

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA Nos. 142 to 146/Mum/2023

(A.Ys.2013-14, 2015-16, 2016-17, 2017-18 & 2020-21)

I.G. International Private Limited, 802, 8 th Floor, Akshar Bluechip Building, Thane Belapur Road, Turbhe, Navi Mumbai – 400705	Vs.	ACIT, Central Circle-1(3) 9 th Floor, Pratishta Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCI2508Q		
Appellant	..	Respondent

Appellant by :	Ashok Mehta & Dipesh Vora
Respondent by :	V.S. Mahajan

Date of Hearing	20.04.2023
Date of Pronouncement	15.05.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

All these 5 appeals filed by the assessee against two different combined orders of ld. CIT(A) are based on identical fact and similar issue, therefore, for the sake convenience all these appeals are adjudicated together by taking the ITA No. 146/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeals wherever applicable.

ITA No. 146/Mum/2023

- “1. The Learned Assessing Officer, erred in reopening assessment under section 147 without jurisdiction based on surmises and conjectures. Learned CIT(A)-47 erred in confirming the same.

2. *Without prejudice to above. The Ld. AO failed to make addition on the issue for which assessment is reopened and made addition on gross profit. Thus the entire assessment needs to be set aside following Jet Airways Ltd. (Bom HC) 331 ITR 236.*
3. *The learned CIT(A) erred in confirming the addition of Rs.53,470/- being expenses in cash incurred by the company without appreciating that these expenses were in the nature of conveyance and sundry expenses incurred by the employees and reimbursed by the company, without appreciating that for such expenses there cannot be any third party supporting documentary evidences.*
4. *The Learned CIT(A) erred in confirming the disallowance of employee's contribution of PF and ESIC of Rs.13,94,845/-.*
5. *The learned CIT(A) erred in confirming the interest under section 234B of Rs.3,16,033/-.*

The assessee craves to leave to add, alter and amend any of the grounds of appeal.”

2. The facts in brief is that assessee company is engaged in the business of trading of fresh fruits. The return of income for A.Y. 2015-16 was filed on 31.10.2015 declaring loss of Rs.6,31,10,749/-. The original assessment u/s 143(3) of the Act was completed on 26.12.2017 assessing the total loss of Rs.4,88,61,073/-.

Subsequently, a survey action u/s 133A of the I. T. Act 1961 was conducted in the case of the assessee on 05.10.2019. The case was reopened u/s 147 of the Act, 1961 on 22.02.2021. Thereafter, order u/s 147 was passed on 30.04.2021 and total loss was assessed at Rs.4,74,12,758/- after making addition of Rs.53,470/- on account of disallowance of cash expenses and Rs.13,94,845/- on account of employee's contribution of PF and ESIC. The further facts are discussed while adjudicating the grounds of appeal filed by the assessee as follows:

Ground No. 1 & 2:

3. During the course of appellate proceedings before us the Id. Counsel at the outset submitted that assessing officer failed to make addition on the issue on the basis of which the assessment was reopened. Therefore, the entire assessment needs to be set aside

following the decision of Hon'ble jurisdictional High Court of Bombay in the case of CIT Vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom) dated 12.04.2010.

4. Heard both the sides and perused the material on record. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 22.02.2021 on the basis of information obtained during survey u/s 133A conducted in the case of the assessee company on 05.10.2019. During the course of survey it was found that cash to the amount of Rs.1,05,98,350/- was withdrawn by the director of the assessee company was not recorded in the books of account of the assessee company, therefore, it was believed that income of Rs. 1,05,98,350/- had escaped assessment because of failure on the part of the assessee company to disclose fully and truly all material fact necessary for its assessment for the year under consideration. The assessee explained that director of the assessee company used to take away cash for safe keeping at home and same was brought back subsequently on later dates at the office premises. However, the cash brought back was not reconciled. The assessee explained that difference in cash taken away and cash brought back was on account of incurring of cash expenses. However, the assessee has placed reliance on self-made vouchers and failed to substantiate the discrepancy with external documentary evidences. Therefore, AO has disallowed an amount of Rs.53,470/- being 25% of such expenses for want of supporting evidences. The ld. Counsel for the assessee relied on the case of the CIT Vs. Jet Airways (I) Ltd. (2010) 195 taxmann 117 (Bombay) to contend that when no addition was made by the A.O on the ground on which reopening of assessment was based then he cannot made additions on other ground. After taking into consideration the above facts and circumstances, we consider that A.O has discussed the issue on the basis of which the reassessment proceedings were initiated and the difference found in the

cash detected during the course of survey was not fully explained by the assessee company. The A.O has made addition partly on the issue on the basis of which the case was reopened u/s 147 of the Act. As discussed supra we consider it is not the case of the assessee where the A.O has not made any addition on the grounds on which the reassessment proceedings were initiated. In fact the A.O has made additions partly on the issue on the basis of which reassessment proceedings was initiated. Therefore, grounds of appeal no.1 and 2 are dismissed.

Ground 3: Regarding addition of Rs.53,470/- for expenses in cash incurred by the assessee company:

5. During the course of assessment the assessee could not substantiate the supporting evidences in respect of its claim of incurring cash expenses to the amount of Rs.2,13,880/-. Therefore, the AO has disallowed these expenses being 25% of such expenses to the amount of Rs.4,53,470/-.

6. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal.

7. After hearing both the sides and perused the material on record. We find that assessee has not substantiated the claim of incurring of cash expenses with relevant external supporting evidences, therefore, we don't find any infirmity in the decision of Ld. CIT(A). Accordingly, this ground of appeal of the assessee stand dismissed.

Ground No. 4; Disallowance of employee's contribution of PF/ESIC of Rs.13,94,845/-:

8. During the course of assessment the A.O noticed that assessee has not deposited employee's contribution towards PF/ESIC to the amount of Rs.13,94,845/- to the government account within the due date as

prescribed in PF/ESIC Act, therefore, the claim of deduction was disallowed towards PF/ESIC u/s 36(1)(va) r.w.s 2(24)(x) of the Act.

9. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

10. Heard both the sides and perused the material on record. The Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT -1 Civil Appeal No. 2833 of 2016 dated 12.10.2022 held that if the employer's did not deposit the amount towards employee's contribution on or before the due date as prescribed in the EPF/ESIC the assessee was not entitled to the deduction. The Hon'ble Supreme Court vide the decision referred as supra set at rest the entire controversy wherein it is held that employer's have to deposit the employee's contribution towards PF/ESIC on or before the due date prescribed in the respective law for availing deduction. Therefore, we don't find any reasons to interfere in the decision of Id. CIT(A). Accordingly, this ground of appeal of the assessee stand dismissed.

Ground No. 5:

11. Levying of interest u/s 234B is consequential therefore, this ground of appeal stand dismissed.

ITA No.144/Mum/2023

Ground No. 1 & 2: (Erred in reopening assessment u/s 147 of the Act)

12. These grounds of appeal are based on similar issue on identical facts as we have adjudicated vide ground nos. 1 & 2 vide ITA No.146/Mum/2022 supra therefore applying the finding of ITA No. 146/Mum/2022 vide ground no. 1 & 2 as mutatis mutandis these grounds of appeal are also dismissed.

Ground No. 3: (Addition of Rs.2,21,953/- being 25% of the total expenses of Rs.8,87,810/-)

13. This ground of appeal is based on similar issue on identical facts as we have adjudicated vide ground no. 3 vide ITA No.146/Mum/2022 supra therefore applying the finding of ITA No. 146/Mum/2022 vide ground no. 3 as mutatis mutandis therefore, this ground of appeal is also dismissed.

Ground No. 4:

14. During the course of appellate proceedings before us the ld. Counsel has not pressed this ground of appeal therefore this ground of appeal is dismissed.

Ground No. 5: (Disallowance of employee's contribution of PF & ESIC)

15. This ground of appeal is based on similar issue on identical facts as we have adjudicated vide ground no. 4 vide ITA No.146/Mum/2022 supra therefore applying the finding of ITA No. 146/Mum/2022 vide ground no. 4 as mutatis mutandis therefore, this ground of appeal is also dismissed.

Ground No.6:

16. This ground of appeal is consequential therefore the same stand dismissed.

ITA No. 142/Mum/2023

Ground Nos. 1 & 2: (Erred in reopening assessment u/s 147 of the Act)

17. This ground of appeal is based on similar issue on identical facts as we have adjudicated vide ground nos. 1 & 2 vide ITA No.146/Mum/2022 supra therefore applying the finding of ITA No.

146/Mum/2022 vide ground no. 1 & 2 as mutatis mutandis this ground of appeal is also dismissed.

Ground No. 3. (Disallowance of Employees Contribution of PF & ESIC)

18. This ground of appeal is based on similar issue on identical facts as we have adjudicated vide ground no. 4 vide ITA No.146/Mum/2022 supra therefore applying the finding of ITA No. 146/Mum/2022 vide ground no. 4 as mutatis mutandis therefore, this ground of appeal is also dismissed.

Ground No. 4: Regarding charging of interest u/s 234B:

19. Levying of interest u/s 234B as per law is consequential therefore this ground of appeal is dismissed.

ITA No. 143/Mum/2023

Ground No. 1 & 2: Disallowance of 25% cash expenses of Rs.2,83,641/-:

20. These grounds of appeal are based on similar facts on identical issue as we have adjudicated vide ground no. 3 vide ITA No. 146/Mum/2023 supra, therefore applying the finding of ITA No. 146/Mum/2023 vide ground no. 3 as mutatis mutandis therefore this ground of appeal are also dismissed.

Ground No. 3:

“The Learned CIT(A) erred in confirming the disallowance of amount of Rs.10,02,917/- u/s 36(1)(va) as per the return of income claim made by the assessee by mistake, being disallowance of both the employer's and employee's contribution to provident fund deposited late and rejecting the plea of the assessee in assessment to disallow only Rs.4,69,210/- being employee's contribution deposited late.”

21. The ld. Counsel contended that disallowance of Rs.10,02,917/- u/s 36(1) (va) as per return of income made by the assessee included

both the employee's and employer contribution to Provident Fund deposited late.

In this regard on perusal of the order of the ld. CIT(A) it is noticed that as per para 15 of the order the ld. CIT(A) has reproduced the above referred specific grounds of appeal raised by the assessee. However, the ld. CIT(A) has dismissed the grounds of appeal by applying his findings for AY. 2018-19 mutatis mutandis to the aforesaid grounds of appeal based on different facts incorrectly.

Therefore, we restore this issue back to the file of the A.O to allow the claim of the assessee pertaining to the extent of employer's contribution towards Provident Fund if it is deposited to the Govt. A/c before the due date of filing return of income. We direct the A.O to consider the claim of employee's contribution towards Provident Funds in accordance with the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-I Civil Appeal No. 2833 of 2016 dated 12.10.2022. Therefore, this ground of appeal is allowed for statistical purpose.

Ground No. 4 & 5:

22. Both these ground are not pressed by the ld. Counsel therefore, the same stand dismissed.

ITA No. 145/Mum/2023

Ground No. 1 & 3:

23. All these ground are not pressed by the ld. Counsel therefore, the same stand dismissed.

Ground No. 4: (Disallowance of Expenses)

24. This ground of appeal is based on similar issue on identical facts as we have adjudicated vide ground no. 3 vide ITA No.146/Mum/2022

supra therefore applying the finding of ITA No. 146/Mum/2022 vide ground no. 3 as mutatis mutandis therefore, this ground of appeal is also dismissed.

Ground No. 5:

25. Levying of interest u/s 234B is consequential therefore, this ground of appeal stand dismissed.

26. In the result, the appeal vide ITA No.142/Mum/2023, ITA No. 144/Mum/2023 and ITA No. 146/Mum/2023 and ITA No. 145/Mum/2023 are dismissed and ITA No.143/Mum/2023 is partly allowed for statistical purposes.

Order pronounced in the open court on 15.05.2023

Sd/-

(Vikas Awasthy)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 15.05.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.