

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.249/Kol/2023  
Assessment Year: 2017-18**

The Braithwaite Burn and Jessop Construction Company Limited. 27, R. N. Mukherjee Road, Kolkata-700001. (PAN: AA ACT9760B)	Vs.	Assistant Commissioner of Income Tax, Circle-1(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Swaraj Kumar, FCA  
Respondent by : Shri Manas Mondal, Addl. CIT, Sr. DR

Date of Hearing : 30.05.2023  
Date of Pronouncement : 31.05.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assesseeis against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1049253763(1) dated 30.01.2023 against the assessment order of ACIT, Circle-1(2), Kolkata u/s. 143(3)of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 24.12.2019 for AY 2017-18.

2. Grounds raised by the assessee are reproduced as under:

*“1. That on the facts and in the circumstances of the case the Ld. Commissioner of Income Tax (Appeal) is erred in law by not allowing the deduction of Rs.8,13,031/- for Bonus, under provision of section 43B, though the same has already been considered and disallowed by the assessee in his total income and tax return.*

2. *The CIT(A) and Ld. AO both erred by not considering the information which was available on record i.e. in Tax Audit report, Income Tax Return and Computation of total income. Therefore addition of Rs.8,13,031 be deleted in full.*

3. *That on the facts and in the circumstances of the case the Ld. CIT (A) is not justified in law and facts while making disallowance for Provident Fund and ESI amounting to Rs. 13,26,915 and Rs. 46,912 respectively without appreciating the fact that appellant has deposited the same before the due date of filing of return of income u/s 139(1) of the Act and the amendment made in the section by Finance Act 2021. Therefore addition of Rs. 13,73,827 be deleted in full.*

4. *That on the facts and in the circumstances of the case the Ld. CIT(A) is erred in by upholding the wrongful action taken by Ld. AO by not granting the differential amount of TDS credit of Rs. 9,76,568/- which was rightfully available in Form 26 AS.*

*Further the Ld. CIT(A) and Ld. AO both are erred in by not giving the effect of the order passed u/s 143(3) on 24.12.2019. In spite of the fact that, in Assessment order Ld. Assessing officer stated that "Given credit for prepaid taxes / self - assessment taxes as per evidence available on 26AS/OLTAS."*

*Therefore full amount of TDS credit as per evidence available on 26AS/OL TAS required to be given to the appellant.*

4. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in by not allowing the expenditure of Rs. 4,16,463/- which is allowable as normal business expenses u/s 37 of the Act without appreciating the fact that appellant has submitted explanation about exact nature of transaction with all supporting documents before the Ld AO during the assessment proceeding.*

*Therefore allowance of expenditure of Rs. 4,16,463 to be given to the appellant."*

3. Brief facts of the case are that assessee filed its return of income on 15.12.2017 reporting total income of Rs.28,35,08,180/-. Assessment was completed u/s. 143(3) by making certain disallowances/additions for which the assessee went in appeal before the ld. CIT(A), who confirmed the same. Aggrieved, assessee is in appeal before the Tribunal on the four issues for which grounds have been reproduced above and are dealt herein *seriatim*.

4. Ground no. 1 is in respect of disallowance on account of bonus u/s. 43B, amounting to Rs.8,13,031/-. According to the ld. Counsel for

the assessee, this has already been considered and disallowed *suo moto* in the computation of total income as well as reported in the Tax Audit Report in Form no. 3CD, all of which are placed on record in the paper book. Ld. Counsel took the Bench through clause 26 of the Tax Audit Report to explain and reconcile that claim of bonus has been adjusted in arriving at the total income reported in the return by the assessee. Ld. Counsel also submitted that how this figure of Rs.8,13,031/- has been arrived at is not discernible from the assessment order. On confrontation of these facts to Ld. Sr. DR, he placed reliance on the order of ld. AO. From the details placed before the Bench, we are of the view that bonus includes arrears for the preceding years as well as claim for the year under consideration and needs proper reconciliation. Considering these facts and the explanation, we find it proper to remit the matter back to the file of Ld. AO for verification of the details placed on record and allow the claim of the assessee in accordance with the provisions of law. Assessee is at liberty to file its explanation or reconciliation in support the claim. Accordingly, ground no. 1 is allowed for statistical purposes.

5. Ground no. 2 is in respect of disallowance towards Provident Fund and ESI amounting to Rs.13,26,915/- and Rs.46,912/-, respectively. This issue is now squarely covered by the decision of Hon'ble Supreme Court in the case of Chekmate Services Pvt. Ltd. vs. CIT [2022] 143 taxmann.com 178 (SC), wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.*" Respectfully following the aforesaid judgment, this ground of appeal is dismissed.

6. Ground no. 3 is in respect of ld. AO not granting credit for the differential amount of TDS which is available in Form no. 26AS. We find that this issue requires verification of records by the Ld. AO and, therefore, it is proper to remit the matter back to the file of ld. AO for proper verification of the same in respect of claim of credit for the taxes paid/claimed by the assessee. Ld. AO is accordingly, directed to allow the credit after due verification of the records. Therefore, this ground of appeal is allowed for statistical purposes.

7. In ground no. 4, assessee has claimed that expenditure of Rs.4,16,463/- which it had initially *suo moto* added while computing the total income as reported in the return, has been wrongly added and is ought to be allowed as normal business expenses u/s. 37(1) of the Act.

7.1. Ld. AO in his respect has made no addition while arriving at the assessed income. In the assessment proceedings, assessee had filed its submission dated 12.12.2019 which put forth the correct position in respect of its claim. This submission of the assessee was not considered by the ld. AO. Assessee took this issue before the ld. CIT(A). Before the ld. CIT(A), assessee claimed that this amount is ought to be allowed as normal business expense which ld. AO has not taken into consideration. However, ld. CIT(A) rejected the claim of the assessee by holding that it has not arisen out of any addition made by the AO.

7.2. Before us, Ld. Counsel asserted that assessee had added this amount under a wrongful notion which otherwise is a normal business expenditure and is to be allowed. He further submitted that if not the ld. AO, the appellate authorities are empowered to entertain such claim. We, considering the facts on record and explanation furnished by the ld. Counsel, find it proper to remit this matter also back to the file of ld. AO to consider this claim of the assessee for which assessee may furnish necessary documentary evidence and explanation. Ld. AO may consider the claim of the assessee in accordance with the provisions of law after having been satisfied about the claim so made. Accordingly, this ground of appeal of assessee is allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 31<sup>st</sup>May, 2023.

**Sd/-**  
**(Rajpal Yadav)**  
**Vice President**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

***Dated: 31<sup>st</sup>May, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent
  3. CIT(A), NFAC, Delhi
  4. CIT , Kolkata
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata