

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 212/MUM/2022
Assessment Year: 2019-2020

Liberty Oil Mills Ltd.,
1-D Wing, Amerchand
Mansion, Madam Cama
Road, Colaba,
Mumbai-400039.

PAN No. AAACL 0888 N
Appellant

Vs.

Dy. CIT Central Circle-3,
Income Tax Office, Qureshi
Mansion, Gokhale Road,
Thane-400602

Respondent

Assessee by : Mr. Gyaneshwar Kataram
Revenue by : Ms. Richa Gulati, DR

Date of Hearing : 30/05/2023
Date of pronouncement : 31/05/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 17.12.2021 passed by the Ld. Commissioner of Income-tax (Appeals) Pune-11 [in short 'the Ld. CIT(A)'] for assessment year 2019-2020. This appeal was originally heard on 18.05.2022 and pronounced on 25.05.2022. But however, on a Miscellaneous Application filed by the Revenue, the Tribunal by way of order dated 03.03.2023 in Miscellaneous Application No. 4/Mum/2023 has



recalled the order of the Tribunal dated 25.05.2022, hence this appeal came before us for hearing and adjudication.

2. The grounds raised by the assessee in the appeal are reproduced as under:

1. *In the circumstances and facts of our case, the Learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the action of Ld. DCIT, CPC in upholding disallowance of Rs. 15,21,814/- w/s 36(1)(va) in respect of employee's contribution to Provident Fund of Rs. 5,47,809/- and employee's contribution to superannuation fund of Rs. 9,74,005/- which has been paid before the prescribed due date of furnishing the Return of Income and not considering the conclusive evidence submitted in its written submission along with supporting paper book.*
2. *In the circumstances and facts of our case, the Learned Commissioner of Income Tax (Appeals) has erred in law and on facts in disregarding the decisions of jurisdictional Courts which is binding upon him and without observing the principles of natural justice and without appreciating the facts and circumstances of the case.*
3. *Without prejudice to the above grounds of appeal, in the circumstances and facts of our case, the Learned Commissioner of Income Tax (Appeals) has erred to rely on amendment to Finance Act, 2021 and considering the same to apply retrospectively which is in direct contravention of the law since the amendment to section 36(1)(va) and section 43B are applicable w.e.f. 01/04/2021 and the Learned Commissioner of Income Tax (Appeals), NFAC has erred not to consider the insertion of explanation to section 36(1)(va) and section 43B under Finance Act, 2021 as clarificatory in nature and the law to be applied prospectively.*

3. Before us, the Ld. Counsel of the assessee referred to the Paper Book page 51 which is part of the tax audit report filed by the



assessee. The Ld. Counsel referred to entries No. 37 to 48 of row No. 20(B) and submitted that auditor has pointed out payment made beyond due date u/s 36(1)(va) of the Income-tax Act, 1961(in short 'the Act') amounting to Rs.15,28,814/-. The Ld. Counsel submitted that out of said amount Rs.9,74,005/- relates to employers contribution to superannuation fund and therefore, same is not falling under the provisions of section 36(1)(va) of the Act. The Ld. Counsel of the assessee filed a complete details of superannuation fund scheme, contribution made for superannuation fund for the year under consideration, the pay slip of the employees supporting that superannuation fund contribution was not part of the employee's contribution. All such evidences are placed on paper book page No. 3 to 21. Regarding contribution to provident fund, the assessee did not dispute the taxability u/s 36(1)(va) of the Act.

4. We have heard rival submission of the parties and perused the relevant material on record. The only disallowance disputed before us is in respect of contribution to superannuation fund. The taxability of deposit under provident fund has not been disputed before us. The Ld. Counsel of the assessee has filed documentary evidence as additional evidence in support of claim that contribution to superannuation fund was in the nature of employer's contribution and not employee's contribution. Those evidences go to the root of taxability of amount under section 36(1)(v) of the Act.



Therefore, in view of the evidences submitted by the Ld. Counsel of the assessee, we feel it appropriate to restore the issue of taxability of deposit of superannuation fund to the file of the Assessing Officer as same required detailed verification at the end of the AO whether the contribution for superannuation fund relates to employer's contribution or employee's contribution. If on verification the Assessing Officer find that the contribution to superannuation fund is only employer's contribution, then no addition u/s 36(1)(va) of the Act is required in the case of the assessee. The order of the Ld. CIT(A) on the issue in dispute is accordingly set aside and matter is restored back to the file of the Assessing Officer for deciding in accordance with law and after a detailed verification of the documentary evidence and after carrying out any inquiries if deemed fit in the circumstances. The grounds of appeal are accordingly partly allowed for statistical purposes.

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

Order pronounced in the open Court on 31/05/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/05/2023
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai