

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.153/KOL/2023

Assessment Year: 2014-15

M/s. Tospel Pvt. Ltd.
(PAN: AABCT2439G)

.....

Appellant

Vs.

Deputy Commissioner of Income-tax,
Circle-2(2), Kolkata.

..... **Respondent**

Appearances by:

Shri Siddharth Jhajharia, FCA appeared for Appellant.

Shri Subhrajyoti Bhattacharjee, CIT (DR) appeared for Respondent.

Date of concluding the hearing : 18.05.2023

Date of pronouncing the order : 06.06.2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by Id. Commissioner of Income-tax, NFAC, Delhi [in short Id. "CIT(A)"] dated 30.12.2022 arising out of the order framed u/s 143(3) r.w.s. 250 of the Act by DCIT, Circle-2(2) dated 28.06.2019.

2. Though the assessee has raised as many as six grounds of appeal with the alternate claim but grievance is only with regard to disallowance in respect of employees' contribution to PF & ESI u/s. 36(1)(va) of the Act of Rs.5,37,908/-.

3. Brief facts of the case are that the assessee is a Private Limited company. Income of Rs.8,95,36,240/- declared in the return filed for AY 2014-15. Ld. Counsel for the assessee vehemently argued referring to the detailed paper book containing 63 pages and making alternate submissions for the crux though the argument is that in the assessment proceeding u/s. 143(3) of the Act disallowance was made u/s. 36(1)(va) of the Act in the order dated 19.12.2016 but the same was deleted by the Ld. CIT(a) vide its order dated 02.04.2019 and thus, the issue attained finality. Thereafter, on account of giving the appeal effect, Ld. AO prepared a computation of tax vide order dated 28.06.2019. However, the assessee was aggrieved with the adjustment made regarding the disallowance made u/s. 14A of the Act. Therefore, assessee preferred an appeal before the Ld. CIT(A), who on his own raised a fresh ground regarding disallowance of employees' contribution to PF & ESI at Rs.5,37,908/- and disallowed the same and such action of the Ld. CIT(A) is beyond jurisdiction and out of the purview of the provisions of section 251 of the Act.

4. On the other hand, Ld. CIT, DR vehemently supported the orders of lower authorities.

5. We have heard rival submissions and gone through the material available on record and placed before us. We notice that in the regular scrutiny proceeding u/s. 143(3) of the Act disallowance u/s. 36(1)(va) of the Act was made at Rs.5,37,908/- on account of delay in deposit of employees' contribution towards PF& ESI before the due date. Thereafter, assessee challenged the same disallowance and was granted relief by Ld. CIT(A) vide its order dated 02.04.2019 wherein Ld. CIT(A) referring to the judgment of jurisdictional High Court deleted the said disallowance. As a result of which the issue attained finality and since the assessee got relief and the tax effect was less

than the prescribed limit there was no further appeal at the end of the revenue. In other words, the issue regarding disallowance u/s. 36(1)(va) of the Act for AY 2014-15 raised in the case of assessee attained finality.

6. Subsequently, when the AO gave effect to the order of the Ld. CIT(A) dated 02.04.2019 in the computation form dated 28.06.2019 the assessee noticed that effect to the Ld. CIT(A)'s order has not been given correctly regarding the issue of disallowance u/s. 14A of the Act. Assessee challenged the said action of the Ld. AO before the Ld. CIT(A). While dealing with the disallowance u/s. 14A of the Act Ld. CIT(A) at its own has observed in para 4.6.2, a notice was given to the assessee for inclusion of new grounds of appeal. In other words, Ld CIT(A) issued a notice to the assessee to include a new ground of appeal regarding disallowance u/s. 36(1)(va) of the Act on delayed payment of employees' contribution to PF & ESI of Rs.5,37,908/- though the assessee raised objection but Ld. CIT(A) decided the issue against the assessee.

7. We notice that so far as the issue of disallowance u/s. 36(1)(va) of the Act is concerned which has been raised by the assessee for AY 2014-15 the matter has attained finality when Ld. CIT(A) deleted the disallowance vide order dated 02.04.2019 and there was no occasion obviously for the assessee to challenge the issue since it was decided in its favour and nor with the revenue since the tax effect was less than the prescribed limit which could have enabled the revenue to file the appeal before this Tribunal. Therefore, under this given facts and circumstances, Ld. CIT(A) has exceeded his jurisdiction by directing the assessee to include a new ground of appeal for the disallowance u/s. 36(1)(va) of the Act, which in our considered view is beyond the jurisdiction since the issue was already settled and no appeal could

be filed by Revenue and raising of such issue by Ld. CIT(A) is barred by limitation and not in accordance with law.

8. Therefore, since the revenue has accepted the finding of the Ld. CIT(A) dated 02.04.2019 favouring the assessee, the action of the Ld. CIT(A) in the impugned order dated 30.12.2022 directing the assessee to include a new ground regarding the disallowance u/s. 36(1)(va) of the Act is unjust, untenable void and bad in law. We thus, set aside the order of the Ld. CIT(A) and delete the disallowance of Rs.5,37,908/- made by the Ld. CIT(A) in the impugned order. Accordingly, appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 06.06. 2023.

Sd/- [Sonjoy Sarma]
Judicial Member

Sd/-[Manish Borad]
Accountant Member

Dated: 6th June, 2023

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – M/s. Topsel Pvt. Ltd., C/o Salarpuria Jajodia & Co., 7, C. R. Avenue, 3rd floor, Kolkata-700072.**
- 2. DCIT, Circle-2(2), Kolkata.**
- CIT(A), NFAC, Delhi.
- CIT-
- Departmental Representative
- Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata