

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 689/KOL/2022
Assessment Year: 2019-2020**

***Assistant Commissioner of Income Tax,...Appellant
Circle-40, Kolkata,
3, Government Place (West), 2nd Floor,
Kolkata-700001
-Vs.-***

***M/s. Calcutta Dock Labour Board,.....Respondent
6, Fairly Wirehouse,
Ground Floor,
Strand Road, Kolkata-700001
[PAN: AAALC0255D]***

Appearances by:

Shri S. Datta, CIT (DR), appeared on behalf of the Revenue

Shri P.J. Bhide, A.R., appeared on behalf of the assessee

Date of concluding the hearing : July 06, 2023

Date of pronouncing the order : July 07, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

This appeal was heard on 8th June, 2023. We have passed the following Order-sheet entry:-

"The present appeal is directed at the instance of Revenue against the order of ld. Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27.09.2022 passed for A.Y. 2019-20.

2. *Though the Revenue has taken five grounds of appeal, but its grievance revolves around a single issue, namely ld. CIT(Appeals) has erred in deleting the disallowance of Rs.46,66,12,909/-, which was added with the aid of section 43B on the ground that payments of Gratuity, Leave Encashment, Bonus etc. were not made by the assessee actually. The ld. CIT(Appeals) has deleted this disallowance by observing as under:-*

“Decision: Ground No. 1: This ground is related to disallowance to Rs.46,66,12,909/-.

The appellant, Calcutta Dock Labour Board, i.e. CDLB has been constituted as per Dock Workers (Regulation of Employment) Act, 1948. Thereafter, CDLB Workers (Regulation of Employment) Scheme was introduced in 1970. During the financial year 2018-19 relevant to the assessment year 2019-20, the appellant filed its original return of income on 25.10.2019. Thereafter, the return was revised on the same day. The appellant has incurred business loss of Rs.2,97,80,049/- as per revised return and the same has been carried forward in the next year. The appellant, during the year, has paid area Pension, Gratuity, Leave Encashment and Bonus amounting to Rs.48,21,20,504/- and claimed as deduction in the return of income. The said claim was also shown by the appellant in Clause 10 of Para 01 of Page 18 of the Income Tax Return.

As the appellant has actually paid Rs.46,66,12,909/- towards arrears pension, gratuity, leave encashment, bonus, the said amount is to be allowed u/s 43B. The appellant has also shown this amount in clause 10 of para 01 of page 18 of income tax return. The CPC wrongly captured the said amount and disallowed u/s 43B. Therefore, the AO is directed to delete the addition of Rs.46,66,12,909/-“.

3. *The stand of the Revenue is that though the ld. 1st Appellate Authority has recorded a finding that these amounts have actually been paid. It is not discernable as to how this factum was verified by the ld. 1st Appellate Authority, but considering this ambiguity in the order, we deem it appropriate to call for a remand report from the ld. Assessing Officer to verify whether actual payments of these amounts have been made or not before the due date of filing of the return. If it is paid, then no disallowance could be made under section 43B. However, if it is found that payments have not actually been made, then these amounts will not be admissible as a deduction to the assessee.*

4. *We direct the ld. Counsel for the assessee to submit copies of the actual challans exhibiting the payments of these amounts. Shri Tridib Kumar Munsi, Ld. ACIT, Circle-40, Kolkata is present in the Court. We direct the ld. Counsel for the assessee to handover all the papers within ten days to the ld. Assessing Officer, who will get it verified within 15 days thereafter. This case is directed to be listed for hearing as a part-heard on **3rd July, 2023**”.*

2. In response to this query, Revenue has filed a remand report, which reads as under:-

*“Office of the Deputy Commissioner of Income Tax,
Circle-40, Kolkata
Room No. 26, 2nd Floor, 3, Govt. place (West), Kolkata-700001
Phone No 033-22439469*

*F. N. ACIT/Cir-40/Kol/ITAT-2.Kol/2023-24/46 Date: 22.06.2023
To
The Commissioner of Income Tax (DR)(ITAT)-4 & Admn., Kolkata,
225C, A.J.C. Bose Road, 6th Floor,
Kolkata- 700020.
(Attn.: **KOL. BENCHES. KOL**)*

(Attn.:- ITO, ITAT-2. Kolkata)

Sir,

Sub: Direction of the Hon'ble 'A' Bench, ITAT, Kolkata dated 08.06.2023 in the case of the Calcutta Dock Labour Board, PAN-AAALC0225D, AY.2019-20. - action taken report.

Ref.: (i) ITA No. 689/Kol/2022, A-BENCH, ITAT, Kolkata.
(ii) CIT(DR)/ITAT-4 & Admn./Kol/2023-24/491 dated 08.06.2023.

Kindly refer to the above.

In pursuance of the direction of the Hon'ble 'A' Bench, ITAT Kolkata, in course of hearing on 08.06.2023, the copies of actual challans exhibiting the payments of Rs.4

6,66,12,909/- were filed by the assessee on 15.06.2023. These were duly verified from the challans supporting evidence of payments as filed by the assessee. On examination of the evidences, it is found that the payment of arrear pension, gratuity, leave encashment, bonus etc., involving an amount of Rs. 46,66,12,909/- were paid before the due date of filing of ITR for the AY 2019-20. The documents as filed by the assessee, are enclosed herewith for your kind perusal.

Encl.: As stated above.

Yours faithfully,

Sd/-

[Tridib Kumar Munsil
ACIT, CIRCLE-40, KOLKATA]

3. If the impugned order of the ld. CIT(Appeals) is perused in the light of the above, then it would reveal that the ld. CIT(Appeals) has deleted the disallowance of Rs.46,66,12,909/- on the ground that this amount represents towards arrears of Pension, Gratuity, Leave Encashment, Bonus and if this amount is being paid actually, then it is allowable under section 43B of the Income Tax Act. The CPC has erred in disallowing it and such a disallowance is being made while processing the return under section 143(1) of the Act. It is a debatable issue. We call for a remand report and direct the ld. Assessing officer to appear in person, then, he admitted

that 'Yes', amounts have actually been paid and no disallowance deserves to be made.

4. In view of the above, there is no merit in this appeal, hence it is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on July 07, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

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

Kolkata, the 7th day of July, 2023

*Copies to : (1) Assistant Commissioner of Income Tax,
Circle-40, Kolkata,
3, Government Place (West), 2nd Floor,
Kolkata-700001*

*(2) M/s. Calcutta Dock Labour Board,
6, Fairly Wirehouse, Ground Floor,
Strand Road, Kolkata-700001*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi*

(4) Commissioner of Income Tax- ,

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.