

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 72/Asr/2023
Assessment Year: 2014-15

FIL Industries Pvt. Ltd.
7-Kohinoor House, Sheikh
Bagh, Srinagar, J&K

[PAN: AAACF 3272A]
(Appellant)

Vs. Asstt. Commissioner of Income
Tax, Circle-1, Jammu, 180012

(Respondent)

Appellant by : Sh. P. N. Arora, Adv.

Respondent by: Smt. Ratinder Kaur, Sr. DR

Date of Hearing: 12.07.2023

Date of Pronouncement: 25.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 20.01.2023 in respect of Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

- “1. *That the order passed by the ACIT, Circle-1, Jammu and the order passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi thereby confirming the order of the Assessing Officer are both against the facts of this case and are untenable under the law.*
2. *That no reasonable and proper opportunity of being heard was allowed before passing the said order. As such the order passed is bad in the eyes of law and the same is liable to be cancelled. Similarly, the Ld. CIT(A) has also grossly erred in confirming the order of the AO. As such the order passed by the worthy CIT(A) is also bad in the eyes of law and the same is liable to be cancelled.*
3. *That the Ld. CIT(A) has grossly erred in confirming the disallowance of deduction of Rs.35,43,942/- claimed u/s 80IB(11A) of the IT Act, 1961 on old CA unit. The authorities below did not appreciate that the assessee is engaged from the stage of harvesting. The assessee get apples harvested which are placed in specially manufactured plastic trays in order to de-heat from atmospheric conditions before transportation of apples.*
4. *That the authorities below did not appreciate that the assessee was clearly entitled for the deduction claimed u/s 80IB(11A) and the same should have been allowed. The CIT(A) has erred in coming to erroneous conclusion that there was no processing of fruits. As a matter of fact the assessee company is engaged in the process of preservation, packaging and also processing of fruits. As such the deduction as claimed should have been allowed. In the past these deductions have been allowed as claimed and in view of the past accepted practice, the deduction as claimed u/s 80IB(11 A) may be allowed.*
5. *That there was no reason and occasion for the AO to invoke the provisions of section 40(A)(ia) thereby making an addition of Rs.3,59,609/- .Similarly the worthy CIT(A) was not justified in confirming the addition made by the AO. It is prayed that the addition of Rs.3,59,609/- may be deleted. Alternatively, without prejudice to the above, the addition made is very high & excessive.*

6. *That the authorities below grossly erred both in law and on facts in holding refund on excise duty of Rs.3,33,34,063/- and interest subsidy of Rs. 1,25,02,988/- which is a capital receipt and the same should not have been treated as a part of the income. As such the refund of excise duty and interest subsidy is totally exempt and is not subject to tax being capital in nature.*
7. *That the additional grounds of appeal as raised should have been accepted by the Ld. CIT(A). The worthy CIT(A) was not justified in rejecting the same in a summary manner and as such these grounds of appeal raised by the appellant should have been accepted in toto.*
8. *That again the CIT(A) has erred in confirming the disallowance of Rs.3,96,388/- being 5% of the expenses under the head Travelling Expenses. The AO has grossly erred in disallowing Rs.3,96,388/- out of travelling expenses on adhoc basis without pointing out any item of disallowance. All the expenses are fully vouched and they were incurred during the course of business and are related to business. As such, there was no reason and occasion for disallowing the same and the same may be allowed in toto. No item of inadmissible nature was pointed by the AO and the CIT(A) and the disallowance has been made merely on adhoc basis.*

Alternatively, without prejudice to the above, the disallowance is very high & excessive.

9. *That any other ground of appeal which may be urged at the time of hearing of the appeal.”*

3. Ground nos. 1 & 2 general in nature which does not require specific adjudication.

4. The ground nos. 3 & 4 pertains to disallowance of claim of deduction of Rs. 35,43,942/- u/s 80IB(11A) of the Income Tax Act on old CA unit.

4.1 The Id. counsel for the appellant has submitted that the similar issue regarding the claim of deduction u/s 80IB of the Income Tax Act, on the identical facts in the assessee's own case has been set aside by the co-ordinate Bench in ITA No. 417/Asr/2015 dated 24.02.2023 vide para 22 as under;

"22. The Id. Counsel argued that ground Nos. 3 to 3.1 with regards to deduction under section 80 IB of the Act of sum of Rs. 10,14,174/- with respect to CA stores and Ground Nos. 4 to 4.1 is with regards to claim of deduction under section 80 IB with respect to F&B division.

22.1 The Id. Counsel argued that Id. CIT (A) at pages 85 to 91 of his order, in principal agreed to the claim of deductions so claimed by the assessee - appellant, however, gave a finding that since AO has not made disallowance with regards to the same in order of assessment, as such, no relief can be claimed. However, a look at the Id. AO's order at page 5, would make it amply clear that adverse observations have been made by learned AO, and once learned CIT (A) in principle agreed to allow the said claim, the said observations so recorded by learned AO should have also been expunged. It is prayed accordingly from Hon'ble ITAT to direct learned AO to expunge the said observations. It is further, submitted that the said finding of Id. CIT (A) is also factually incorrect, whereas, the deduction so made by learned AO under section 80 IB of a sum of Rs. 2,11,80,352/-, includes the aforesaid figures of Rs. 10,14,174/- and Rs. 91,014/-.

22.2 We heard the rival submission & observed the documents. There is factual difference in both the orders of the revenue. The Id. CIT-DR only relied on the orders of the revenue. We remit back to the matter to the Id. CIT(A) and adjudicate the issue considering the submission of assessee."

4.2 Following Coordinate Bench decision, in assessee's own case on identical facts, we consider it deem fit to remit back this issue to

the Id. CIT(A) to adjudicate and decide afresh after considering the submission of assessee on this issue.

5. In Ground no. 5, the assessee has challenged the addition of Rs.3,59,609/- made u/s 40(A)(ia).

5.1 The Id. CIT(A) has confirmed the addition by holding that the assessee has fails to deduct the TDS as assessee was deemed to be an assessee in default under the first proviso to Sub-section 1 of section 201, of the Act. For the purpose of this sub-clause, it shall be deemed that assessee has deducted and paid the tax on such sum on the date of furnishing the return of income by the payee. First proviso to sub-section 1 of section 201 prescribes that the payee should have furnished return of income u/s.139(1), should have taken into account such sum for computing income, should have paid the tax due on income and the person furnishes a certificate to this effect from an accountant.

5.2 Since, the appellant assessee has not furnished any certificate of TDS deduction, it is held that the AO has correctly disallowed the sum of Rs.3,59,609/- u/s.40(a)(ia) and therefore, the Ld. CIT (A) was justified in confirming the said addition. Accordingly, this ground of appeal is dismissed.

6. Ground nos. 6 & 7, the assessee has objected to the treating the refund on excise duty of Rs.3,33,34,063/- and interest subsidy of Rs.1,25,02,988/- which is a capital receipt and the same should not have been treated as part of the income. The relevant para 6 of the CIT(A) orders is reproduced as under:

*“6. I have carefully considered the grounds of appeal, statement of facts and written submissions of the appellant. First of all, admission of the additional ground of appeal needs to be decided. There is no dispute that the question of law arising from facts which are on record in the assessment proceedings can be allowed in the appellate proceedings. On perusal of assessment order, it is found that the AO has not mentioned or adjudicated on the issue of refund of excise duty and interest subsidy. There is no indication in the assessment order that this issue was even examined by the AO or any question was raised by the AO. **Therefore, the additional ground raised by the appellant is hereby rejected.**”*

6.1 The Ld. AR submitted that the authorities below grossly erred both in law and on facts in holding refund on excise duty of Rs.3,33,34,063/- and interest subsidy of Rs. 1,25,02,988/- which is a capital receipt and the same should not have been treated as a part of the income. He argued that the refund of excise duty and interest subsidy is totally exempt and is not subject to tax being capital in nature as contested by way of the additional grounds of appeal ought to have been accepted by the Ld. CIT(A). He argued that the worthy CIT(A) was not justified in rejecting the same in a summary manner.

6.2 Per contra, the Ld. Addl. CIT DR vehemently supported the impugned order. He argued that the issue of excise duty of Rs.3,33,34,063/- and interest subsidy of Rs.1,25,02,988/- being claimed as capital receipt by way of additional ground of appeal before the Ld. CIT(A) has not been arising out of the Assessment Order per se being not claimed either in the return of income or during the assessment proceedings before the AO. He contended that the CIT(A) was justified in rejecting the claim of the appellant and pleaded that the finding of CIT (A) may be sustained.

6.3 Admittedly, the appellant assessee has raised before the Ld. CIT(A) an additional ground as regard to claim of refund of excise duty of Rs.3,33,34,063/- and interest subsidy of Rs.1,25,02,988/- for the first time although, it has not been arising out of the Assessment Order. The Ld. CIT(A) had observed that there is no dispute that the question of law arising from facts which are on record in the assessment proceedings can be allowed in the appellate proceedings but there was no such claim of issue of refund of excise duty and interest subsidy before the AO.

6.4 The Hon'ble Apex Court in the case of "Principal Commissioner of Income Tax Vs. Wipro Ltd", [2022] 140 taxmann.com 223 (SC) observed that the assessing authority and the appellate authorities as well, are not permitted by the statute to grant relief to the appellant on the deduction or exemption by way of additional ground of appeals to the effect to reduce the Taxable Income declared by the appellant in the return of income as per provisions of Income Tax Act. Without prejudice to the above, the issue is further settled by the Hon'ble Apex Court (Supra) that such claims are even not permissible by way of revised return of income except where there is an omission or a wrong statement.

6.5 Under the circumstances, we are of the view that the issue of refund claimed by the appellant on account of capital subsidies is deem fit to remand back to the file of the CIT(A) with the direction to adjudicate the issue afresh on merits after considering the material evidence filed on record, to be filed during fresh proceedings in light of the Apex Court Judgement (Supra) and by granting adequate fresh opportunity of being heard to the assessee, in view of the principle of natural justice.

7. In the last ground, the appellant objected to the decision of the the CIT(A) that he has erred in confirming the disallowance of Rs.3,96,388/- being 5% of the expenses under the head Travelling Expenses.

7.1 The AR submitted that the AO has grossly erred in disallowing Rs.3,96,388/- out of travelling expenses on adhoc basis without pointing out any item of disallowance. All the expenses are fully vouched and they were incurred during the course of business and are related to business. As such, there was no reason and occasion for disallowing the same as no item of inadmissible nature was pointed either by the AO or the CIT(A) and the disallowance has been made merely on adhoc basis. Alternatively, he pleaded that without prejudice to the above, the disallowance is very high & excessive.

7.3 It is admitted facts on record that the disallowance of Rs.3,96,388/- made by the AO comprises of 5% of expenses under the head travelling which were found to be justified for the reasons that part of the expenses was either not properly vouched and were incurred in cash and the assessee's counsel also admitted personal element in the above expenses before the AO vide order sheet entry dated 16.12.2016. Considering the

turn over and nature of expenditure, the Ld. CIT(A) has been justified in confirming the small addition against the disallowance of Rs.3,96,388/- made by the AO comprises of 5% of expenses under the head travelling. Therefore, no interference is called for.

8. In the backdrop of the aforesaid discussion, the appeal of the assessee is disposed off in the terms indicated as above.

Order pronounced in the open court on 25.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order