

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 21/Ind/2023
Assessment Year: 2018-19

Dy. CIT-5(1), Bhopal	<u>बनाम/</u> Vs.	Madhya Pradesh Rajya Van Vikas Nigam, 5 th Floor, Panchanan Building, TT Nagar, Bhopal
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AACCM1081C		
Revenue by	Shri P.K. Mishra, CIT DR	
Assessee by	None	
Date of Hearing	27.07.2023	
Date of Pronouncement	28.07.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 30.11.2022 passed by learned Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 23.03.2021 passed by National e-Assessment Centre, Delhi u/s 143(3) read with sections 143(3A) & 143(3B) of the Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the Revenue has filed this appeal on following ground:

“(1) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting addition made on account of profit of Government accounts term as (lease rent) amounting to Rs. 85,14,01,174/- despite the facts that NCA (National Commission on Agriculture) evolved the formula for determining the lease rent allowable to the extent of only Rs. 63,67,826/-.”

2. None appeared on behalf of the assessee when the case was called. Ld. DR for the Revenue was available for arguments. On perusal of case file, it is found that the present appeal can be decided on the basis of the orders of the lower-authorities and after hearing Ld. DR without assistance of assessee. Accordingly, the hearing was proceeded.

3. The assessee is an undertaking of State Government of Madhya Pradesh M.P. engaged in the business of forestry and agriculture. The assessee's case for AY 2018-19 was selected for scrutiny assessment u/s 143(2). During assessment-proceeding, the AO observed that the Govt. of M.P. has leased out forest land to assessee. The assessee before carrying out further activities makes sale of forest products naturally grown on such land. From this activity, the assessee earned a surplus of Rs. 85,77,69,000/- and declared the same as “payable” in Balance-Sheet. The AO found that in the assessment-orders of earlier years, it had been consistently held by department that lease-rent to the extent of Rs. 63,67,826/- was only allowable as expenditure; accordingly excess amount was disallowed/brought to tax since AY 2017-18. The AO further noted that even though the CIT(A) and ITAT have deleted the disallowance made by department in past but the department has challenged before Hon'ble High Court and the matter is pending. The AO, in order to maintain consistency, disallowed excess amount of Rs. 85,14,01,174/- [Rs. 85,77,69,000/- (-) Rs. 63,67,826/-] in current year.

4. When the assessee carried the matter in first appeal, Ld. CIT(A) deleted the disallowance by observing and holding as under:

"5.2 DECISION :

I have carefully considered the impugned Order and the submissions made by the appellant. The facts of the case are that the assessee is an MP Government undertaking engaged in business of forestry. The AO further observed that in assessment order of earlier years, it had been consistently held by the Department that lease rent of Rs. 63,67,826/- is only allowable expenditure in this regard and the excess lease rent had been brought to the tax since assessment year 1997-98. Even though both Ld. CIT(A) and Hon'ble Tribunal had deleted the said addition but the Department has not accepted the decision and challenged in appeal before the Hon'ble High Court, which is pending, hence, to maintain consistency the AO made the said disallowance of Rs. 85,14,01,174/- for the assessment year under consideration. The Hon'ble ITAT, Indore Bench vide its order dated 31.10.2011 in I.T.A.No. 21/Ind/2011 for the assessment year 2007-08 allowed the claim of the appellant and dismissed the departmental appeal. The concluding para of this order of Hon'ble ITAT reads as under:-

"5. If the conclusion drawn in the impugned order, the order of the Tribunal for earlier assessment years and un-controverted facts as above are kept in juxtaposition and analyzed, we find that both the issues i.e. lease rent and corporate expenses are covered by the aforesaid decision of the Tribunal, which have been followed by the Ld.CIT(A) in the impugned order, therefore, in the absence of any contrary facts, we find no infirmity in the stand of Ld. CIT(A). In the result, the appeal of the Revenue is dismissed."

Respectfully following the decisions of Hon'ble ITAT on this issue, the addition on account of disallowance in respect of profit of government account termed as lease rent amounting to Rs. 85,14,01,174/- is hereby deleted. This ground No. 1 of appeal is allowed."

5. On perusal of orders of both of the lower-authorities, it emerges very clearly that the identical disallowance made in earlier years had been deleted by CIT(A) and ITAT and the departmental appeal is pending before High Court. Therefore, in the current year under consideration, while the AO has made disallowance to maintain consistency of earlier year, the CIT(A) has deleted the same following the decision of ITAT in earlier year. In this scenario, we find that the order of CIT(A), deleting the disallowance following

ITAT's decision in assessee's own case on identical issue, is in order and we have no reason to interfere with the same. We approve the view taken by CIT(A) and uphold his order.

6. Resultantly, this appeal is dismissed.

Order pronounced in the open court on 28.07.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.07.2023.

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*