

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. 22/Ind/2023
Assessment Year:2019-20

ACIT, 4(1), Indore.	<u>बनाम/</u> Vs.	Sanghvi Foods Private Limited, 362-AA, Silver House, Scheme No. 74C, A.B.Road, Indore
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AACCS4128C		
Assessee by	Shri S.N.Agrawal and Shri Pankaj Mongra, CAs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	22.08.2023	
Date of Pronouncement	24.08.2023	

आदेश / O R D E R

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

Feeling aggrieved by appeal-order dated 28.11.2022 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)"], which in turn arises out of intimation of assessment dated 10.05.2020 passed by CPC, Bangalore u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the Revenue has filed this appeal.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts of the case are such that the assessee filed return of income u/s 139(1) of the Income-tax Act, 1961 on 30.09.2019 declaring a total income of Rs. 19,78,74,660/-, which was subjected to processing u/s 143(1) by Ld. AO. While doing so, the AO made certain disallowances/ additions which included following items:

Particulars	Amount
Disallowance u/s 37 – Club Membership fees, Interest on TDS and Assets Written-off	20,61,716/-
Disallowance u/s 40A(7) – Late payment of Gratuity	56,33,509/-
Disallowance u/s 43B of the I. T. Act.	86,96,839/-

4. The assessee contested these disallowances in first-appeal whereupon the CIT(A) deleted disallowances by observing thus:

“Grounds 1.1 to 1.3

“5. I have carefully examined and verified the contention of the appellant and found that the appellant had filed its return of income after disallowing of Rs. 1,63,92,064/- under the following heads:

S.No.	Particulars	Amount
1.	Inconsistency in the total amount of disallowance u/s 37 of the I. T. Act (17,70,000 Club Membership fees + 255 Interest on TDS +2,28,217 Assets kW/off + 63244 Penalty)	20,61,716/-
2.	Inconsistency in the Provision for payment of Gratuity u/s 40A(7) of the I. T. Act.	56,33,509/-
3.	Inconsistency in the Total Amount debited to P&L Account but Disallowable u/s 43B of the I.T. Act.	86,96,839/-

5.1 *Since the appellant has already disallowed the above amount in its return of income for the A.Y. 2019-20, therefore, disallowances should not be twice on same account. It is seen that the appellant in its computation of income has disallowed the club membership fees and then allowed the same. Club membership fees' allowability u/s 37 is a debatable issue and cannot be a subject matter of prime facie adjustment u/s 143(1)(a). In view of same, the addition made by the CPC, is hereby deleted. As a result, ground 1.1, 1.2 & 1.3 raised by the appellant are allowed."*

5. Thus, the CIT(A) deleted disallowances by recording a finding that the assessee has already made proper disallowance while filing return of income.

6. Now, the revenue has come in this appeal on following ground:

"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the additions of Rs. 20,61,716/- u/s 37, Rs. 56,33,509/- u/s 40A(7) and Rs. 86,96,839/- u/s 43B without appreciating the fact that there is no conclusive proof that these amounts have been included by the assessee in its total income."

7. Ld. AR for the assessee made a categorical assertion that the assessee had made disallowance before filing return of income. To establish this, he drew us to Page No. 3 of the Paper-Book where a sheet titled "Computation of Total Income" is filed. Ld. AR explained the details of all items of disallowances, one by one, and successfully demonstrated that the assessee has voluntarily made disallowance before filing return. Ld. DR could not point out any deficiency in the submission of Ld. AR.

8. Therefore, taking into account the categorical finding made by Ld. CIT(A) in first-appeal that the assessee has made disallowance before filing return of income and finding a corroboration of such finding from the explanation of Ld. AR with reference to the documents placed in Paper-Book which the Ld. DR could not controvert or rebut, we do not feel any reason to interfere with the order of CIT(A). The same is hereby upheld.

9. Resultantly, this appeal of revenue is dismissed.

Order pronounced in the open court on 24.08.2023.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक /Dated :24.08.2023.

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*