

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 1265/Del/2023 : Asstt. Year: 2018-19

Whessoe Technology Centre, Morton Palms, Darlington Country Durham, DL14WB, United Kingdom.	Vs	ACIT, International Taxation, Gurgaon.
(APPELLANT)		(RESPONDENT)
PAN No. AABCW0152B		

**Assessee by : Sh. Vishal Kalra, Adv.
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 18.09.2023	Date of Pronouncement: 22.09.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. Assessing Officer dated 28.02.2023 passed u/s 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law, the AO has erred in assessing the total income of the Appellant at INR 3,95,83,247, in pursuance to the directions issued by the DRP, as against the returned income of INR 2,50,21,950.

1.1 That on the facts and circumstances of the case and in law, the assessment order dated February 28, 2023 passed by the AO under section 143(3) read with section 144C(13) of the Act is bad in law as well as on facts.

2. *That on the facts and circumstances of the case and in law, the AO / DRP have erred in disallowing the salary expense amounting to INR 1,45,61,297 claimed as a deduction .on actual deposit of taxes during the subject assessment year ignoring the fact that these expenses were disallowed in the year of non-deduction of tax viz., AY 2017-18.*

2.1. *That on the facts and circumstances of the case and in law, the AO / DRP have erred in disallowing INR 1,45,61,297 without appreciating that the provisions of section 40(a)(iii) of the Act and ignoring the submissions/ evidence filed by the Appellant during the course of assessment proceedings.*

3. *That on the facts and circumstances of the case and in law, the AO / DRP have erred in disallowing deduction of INR 44,82,497, being input tax credit written off in the books, on the ground that the same has not been claimed in the return of income and neither routed through the P&L account ignoring that these were disallowed in the year in which these were written off viz. AY 2019-20 as prior period expense.*

3.1. *That on the facts and circumstances of the case and in law, the AO / DRP have erred in alleging that the Appellant has not made any submissions on admissibility of the claim of input tax credit deduction ignoring the detailed submissions filed by the Appellant during the course of assessment proceedings.*

4. *That on the facts and circumstances of the case and in law, the AO has erred in levying interest under section 234B and 234D of the Act.*

5. *That on the facts and circumstances of the case and in law, the AO has erred in initiating penalty proceedings under section 270A of the Act.*

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant prays for leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before, or at, the time of hearing of the appeal."

3. Heard the arguments of both the parties and perused the material available on record.

Salary – TDS deposited – Section 40(a)(ia):

4. The salary expenses of Rs.95,94,227/- pertaining to A.Y. 2017-18 was disallowed in the same year on account of non-deduction of tax and claimed as deduction in the A.Y. 2018-19 on deposit of tax. Copy of the tax computation for the A.Y. 2017-18 and A.Y. 2018-19 has been examined the facts have been found to be correct and hence, we hold that no disallowance is called for u/s 40(a)(iii) in the current Assessment Year. In the result, the appeal of the assessee on this ground is allowed.

Write off of input Tax Credit – Rs.44,82,497/-:

5. We find that the input tax credit has not been claimed while filing the Income Tax Return for the A.Y. 2018-19 and the claim has been made by filing a revised tax computation during the course of Assessment proceedings for the A.Y. 2018-19. The AO disallowed the same and the Id. DRP has directed the AO to consider the facts on record pertaining to claim of input tax credit which has been ignored by the AO while passing the final Assessment Order. On going through the facts, we find that the

assessee is eligible to claim the input tax credit which has not been disputed even by the revenue. The contention of the revenue was that the claim should have been in the Income Tax Return and no subsequent claims could be allowed. Relying on the CBDT vide Circular No. 14 dated 11.04.1955 and also the judgment of Hon'ble Apex Court in the case of M/s Goeteze India, we hold that the claim of the assessee is genuine and direct the revenue to delete the addition on this account.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 22/09/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 22/09/2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR