

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 790 & 791/Kol/2023
Assessment Years: 2018-19 & 2020-21

Kunchunpore Tea Company Ltd. 2, Ganesh Chandra Avenue, 6 th Floor, Kolkata-700013. (PAN: AABCK6361N)	Vs.	Income Tax Officer, Ward-4(4), Kolkata.
Appellant		Respondent

Date of Hearing	20.09.2023
Date of Pronouncement	22.09.2023
For the Appellant	Shri P. J. Bhide, AR
For the Respondent	Shri S. B. Chakraborty, JCIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

Both these captioned appeals preferred by the assessee against the separate orders of Ld. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi dated 14.06.2023 for AYs 2018-19 and 2020-21. Since both these appeals have been heard together, we dispose of both these appeals by this consolidated order for the sake of convenience.

2. First we take up ITA No. 790.Kol.2023. The only issue raised by the assessee is against the order of Ld. CIT(A) upholding the order of AO wherein the AO applied a rate of 30% of tax instead of 25% prescribed under the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. Facts in brief are that during the year the assessee applied the rate of tax at 25% on the total income and paid the tax accordingly. The return of income was filed on 25.09.2018. The said return was processed u/s. 143(1) of the Act vide order dated 15.11.2019 wherein the AO applied the rate of tax at 30% and computed the demand of Rs.5,37,570/- as payable by the assessee.

4. The assessee challenged the order before the Ld. CIT(A). However, the Ld. CIT(A) dismissed the appeal on technical reason that appeal has barred by limitation by 25 days without deciding the same on merit.

5. After hearing the rival contentions and perusing the material available on record, we find that the rate of tax applicable to the assessee during the year is only 25% and not 30%

as applied by the AO, CPC in the intimation u/s. 143(1) dated 15.11.2019. The assessee has filed before us the 1st schedule part I containing the rate of taxes applicable to the assessee as per the Finance Bill 2018 and in para (e), we note that in case of domestic company the rate of taxes applicable is 25% of the total income where turnover or gross receipt in the previous year 2015-16 does not exceed Rs. 50 Cr. and in other cases the rate of tax is 30%. In the present case, the assessee has filed before us the certified copy of Annual Accounts duly audited by the auditor of the assessee M/s. A. Sanyal & Co. We observe from the P&L Account the total turnover of the assessee is Rs.3,56,36,458/- and during FY 2014-15 the turnover was Rs.4,34,17,867/-. As is evident from the condition laid down in the Finance Bill 2018 Part (e) that where the turnover of the domestic company does not exceed Rs. 50 Cr. in previous year 2015-16, the rate will be 25% and, therefore, it was rightly applied by the AO. Considering the smallness of the issue, we are not restoring the appeal before the AO and are being adjudicated. Accordingly, we direct the AO to apply a tax rate of 25% on the total income instead of 30%. Appeal of the assessee is allowed.

6. Now, we are coming to ITA No. 791/Kol/2023. The issue raised in this appeal is against the confirmation of addition by Ld. CIT(A) of Rs.11,95,976/- being bonus paid to the employees. The assessee filed return of income on 04.11.2020 declaring total income of Rs.19,19,410/- which was processed u/s. 143(1) of the Act and the AO, CPC made the addition of Rs.11,95,976/- to the total income of the assessee. According to the assessee, the said amount represented the bonus outstanding at the year end which was paid before the due date of filing the return and the said fact was duly disclosed in Tax Audit Report in para 20a(i) and, therefore, the same is not disallowable in terms of provision of section 43B of the Act. However, in the intimation u/s. 143(1) of the Act the same was disallowed and added in the income of the assessee and demand was raised accordingly.

7. The assessee preferred an appeal before the Ld. CIT(A). But the Ld. CIT(A) has dismissed the appeal of the assessee upholding that the said demand is not allowable u/s. 36(1)(ii) of the Act and thus dismissed the appeal of the assessee.

8. After hearing the rival contentions and perusing the material available on record including the tax audit report, we observe that bonus is outstanding at the year end of Rs.11,95,976/- and was paid on 08.10.2020 and 09.10.2020 respectively and that fact was duly mentioned in para 20(a)(i) in the tax audit report. In our opinion, once the outstanding

amount is paid before the due date of filing the return of income u/s. 139(1) of the Act, then, same is not liable to be disallowed u/s. 43B of the Act. We note that Ld. CIT(A) has disallowed and dismissed the appeal of the assessee by giving flimsy reasons that this amount is not admissible/s. 36(1)(ii) of the Act. Considering the facts and circumstances of the case, we are inclined to set aside the order of Ld CIT(A) and direct the AO to delete the disallowance.

9. In the result, both the appeals of assessee are allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 22nd September, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi
4. CIT, ,
5. DR, ITAT, Kolkata,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata