

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'SMC' KOLKATA**

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA Nos. 851/Kol/2023  
Assessment Year: 2015-16**

Bijan Behari Biswas 34, Manton Super Market, Kolkata- 700034. <b>PAN: ADRPB 4871 C</b> (Appellant)	Vs.	ITO, Ward-10(3), Kolkata (Respondent)
--	-----	---

**Present for:**

Appellant by : Shri G. Banerjee, AR  
Respondent by : Shri Bivekananda Madhu, JCIT

Date of Hearing : 10.10.2023  
Date of Pronouncement : 17.10.2023

**ORDER**

**PER SONJOY SARMA, JM:**

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 22.06.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. For that in the facts and circumstances of the case and in law, the addition of Rs, 20,34,110 on alleged ground of variation of purchase consideration of building as compared to stamp duty valuation without considering first proviso of s. 56(2(vi)(b). is wrong, arbitrary, misconceived, erroneous, unlawful and deserves to be deleted/reduced.*
- 2. For that in the facts and circumstances of the case and in law addition u/s. 361(va) read with s. 2(24) (x) of Rs. 286,906 because of delayed deposit of employees contribution of provident fund and state insurance are wrong, arbitrary, misconceived, erroneous, unlawful and deserves to be deleted/reduced.*
- 3. For that in the facts and circumstances of the case and in law, the disallowance of Rs. 57,943 being subscription, donation and*

*advertisement is wrong, arbitrary, misconceived, erroneous, unlawful and deserves to be deleted/reduced.*

*4. For that in the facts and circumstances of the case and in law, the assessee was not granted sufficient and adequate opportunity to explain his case and the authorities below hastily, without notice and arbitrarily passed orders which is against principles of natural justice and equity.*

*5. For that the assessee craves leave to alter, add, amend, moderate, substitute or delete any one or more of the ground or grounds of appeal at any time before or in course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2015-16 by declaring total income of Rs. 23,50,543/-. Subsequently, the case of the assessee was selected for scrutiny through CASS followed by statutory notices u/s 143(2) and 142(1) of the Act. In response to notices, the ld. AR of the assessee appeared before the AO from time to time after considering the submission of the assessee and following additions were made which are as under:

*“i. Variation of purchase consideration of building as compared to stamp duty valuation without considering first proviso of section 56(2)(vii)(b) of the Act amounting to Rs. 20,34,110/-.*

*ii. Delayed payment of ESI & EPF of Rs. 2,86,906/-.*

*iii. Various subscription, donation and advertisement payment expenses disallowed of Rs. 57,943/-.*

*iv. Excess depreciation claimed of Rs. 15,668/-*

*v. Misc. expenses disallowed of Rs. 8,020/-.”*

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the above order, assessee went into appeal before the Tribunal raising multiple grounds of appeal. The first ground of appeal is in relation with addition of Rs. 20,34,110/- on account of variation of purchase consideration of building as compared to stamp duty without considering of the provisions of the Act. On this context, the ld. AR

submitted that the present issue has never been dealt properly by the ld. AO as well as ld. CIT(A) while passing the impugned order. The ld. AR submitted that the assessee had entered agreement for sale with the prospective seller on 27.01.2012 and another property agreement for sale had entered on 02.03.2012 respectively and it is desirable to take the stamp valuation of property on the date of agreement for sale was entered between the parties. The calculation made by the AO on the basis of variation of consideration of sale deed and valuation determined by the stamp duty authority by making addition is not proper. Therefore, the issue may be sent to file of AO to decide the issue afresh by taking into consideration the value of property on the date of agreement for sale entered between the assessee and seller.

5. On the other hand, ld. DR supported the decision rendered by the authorities below.

6. We after considering the submission of the parties and going through the material available on record, we find that the calculation made by the AO on the basis of deviation on account of stamp duty valuation and value determined by the stamp duty authority on the date of execution of sale deed for which the AO made an addition of Rs. 20,34,110/- in the hands of assessee. However, as per the submission of the ld. AR stated that the agreement for sale had entered on 27.01.2012 and 02.03.2012 respectively. The ld. AO while calculating difference of value property, he has only taking into consideration of stamp value on the date of execution of deed. However, it is noted that taking into consideration agreement for sale on which stamp value of the property needed to be considered. In view of the above fact, we feel it necessary to remand back the whole issue to the file of AO to decide the issue afresh after giving reasonable opportunity to the assessee in order to substantiate its claim.

7. Ground no. 2 for adjudication is in respect of delayed deposit of employees contribution of provident fund and state insurance beyond the date prescribed under the law. However, this issue relating to PF & ESI have come to rest by raising verdict of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT (2022) 143 taxman.com 178 (SC) dated 12.10.2022 where it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees contribution to PF cannot be claimed when deposited within due date of filing of return even when r.w.s. 43B of the Act. We respectfully following the decision of Hon'ble Supreme Court (supra) which is squarely covered against the assessee and accordingly ground taken by the assessee is hereby dismissed.

8. Ground no. 3 taken by the assessee in respect of disallowance of Rs. 57,943/- on account of subscription, donation and advertisement which is arbitrary and misconceived and deserved to be deleted as stated by the AR of the assessee. On this issue, the ld. AR submitted that the assessee incurred expenses by way of subscription, donation and advertisement wholly and exclusively for the purpose of business claiming the same as allowable expenditure. However, the ld. AO while framing the assessment without furnishing any reason disallowed and added to the income of the assessee. He further contended that the ld. AO cannot be disallowed such expenses without assigning any authority. We examine the issue and notice that while passing the impugned order, the CIT(A) has observed in following manner:

*“Ground No. 3 relates to addition of Rs. 57,943/- out of expenses on account of subscription, donation and advertisement made in favour of pooja committees, clubs, political parties etc. The AO while making his decision has held as under:*

*‘On verification of the P & L a/c for the A.Y. 2015-16 and the information filed by the assessee company, it is seen that the assessee has debited Subscription, donation & advertisement for a total amount of Rs. 1,39,068/- as expenses. The assessee has paid the above to the Pooja*

*committees, clubs, political party etc. on various occasions and some where it is not clear to whom made payments. The same was discussed with the assessee's AR and is told that the above are not allowable expenses. The A/R didn't file any objection and could not explain. On being asked, the ARs of the assessee company assented to the issue raised and then acquiesced to offer the above amount for taxation for the F.Y. 2014-15 relevant to the A, Y 2015-16. Hence it is proposed to add the amount of Rs. 57,943/- and added back to the total income of the assessee company. Hence, the amount of Rs. 57,943/- being disallowable expenses is added back to the total income of the assessee.'*

*During appeal proceedings, the appellant has not submitted any submission or reply or facts to controvert the above finding made by the AO. I find that the addition made by the AO is in accordance with the facts of the case and provisions of law. Therefore, the above addition of Rs.57,943/- is upheld. Ground No.3 is dismissed."*

9. From the findings of the ld. CIT(A), we find that assessee could not furnish any submission or reply to controvert the fact before the AO as well as before the ld. CIT(A) in order to substantiate its claim. Therefore, the ld. CIT(A) dismissed the ground taken by the assessee and even before us the assessee has produced the details to justify the claim made by the assessee. We, therefore, feel it necessary to restore this issue to ld. AO for carrying out necessary verification and decide in accordance with law. In terms of above, ground no. 3 is allowed for statistical purposes.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

**Order pronounced in the open court on 17.10.2023**

**Sd/-**

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Copy to:

1. The Appellant: Bijan Behari Biswas.
2. The Respondent: ITO, Ward-10(3), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata