

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'A' KOLKATA

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.77/Kol/2023
Assessment Year: 2015-16**

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| New Chumta Tea Company Limited Mc Leod House, 2 nd Floor, 3, Netaji Subhas Road, Kolkata-700001. PAN: AABCR 2629 G (Appellant) | Vs. | DCIT, Circle-4(2), Kolkata (Respondent) |
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Present for:

Appellant by : Shri Sanjay Bhattacharya, FCA
Respondent by : Shri B.K. Singh, JCIT, Sr. DR

Date of Hearing : 01.08.2023
Date of Pronouncement : 30.10.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 25.11.2022 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"i. That the Id. Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the action of the assessing officer in treating the expenditure incurred by the appellant on nurseries and Young Tea Maintenance towards cost of planting Bushes in replacement of Bushes that had died or had become permanently useless in an area earlier planted as alleged capital expenditure and in confirming the disallowance of the concerned expenditure of Rs. 30,01,809/-.

ii. That the Id. Commissioner of Income-tax (Appeals), NFAC was wrong in holding that the Computation of Proportionate Income from Bought Leafs had allegedly been correctly made by the assessing officer and in confirming the said computation made by the assessing officer at Rs. 1,31,63,354/- against the proportionate loss of Rs. 2,93,571/- computed by the appellant.

iii. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the hearing of the appeal.”

2. At the outset, we find that there is a delay of 7 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2015-16 declaring income of Rs. 53,22,970/-. The case of the assessee was selected for scrutiny followed by notices issued u/s 143(2) and 142(1) of the Act. In response to the notices, the ld. AR of the assessee appeared from time to time before the assessing officer and filed various details as desired by the ld. AO. However, the ld. AO did not satisfy with the submission made by the ld. AR of the assessee and various additions were made in the hands of assessee and assessed the income of the assessee at Rs. 1,68,59,680/-.

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

5. Aggrieved by the above order, assessee is in appeal before the Tribunal. The first issue involved in this appeal is regarding the view taken by the ld. CIT(A), NFACT by confirming the action of the ld. AO by treating the expenditure incurred by assessee on nurseries and young tea maintenance had been towards the cost

of planting bushes in replacement of bushes that had died or had become permanently useless in an area earlier planted as alleged capital expenditure by confirming the disallowance of expenditure of Rs. 30,01,809/- in the hands of assessee. On this issue, the ld. AR submitted that nurseries and young tea maintenance had been towards the cost of planting bushes in replacement of bushes that had died or had become permanently useless in an area earlier planted. Therefore, the deductions for such expenses were to be allowed in accordance with Rule 8(2) of the Income-tax Rules, 1962. However, the authorities below disallowed the claim of the assessee by treating it as capital in nature by adding the entire expense in the hands of assessee as business income is not correct. Since there has been specific provision under the income tax laws for deduction of expenses incurred on Young Tea Maintenance. The ld. AR further submits that the earlier year, the assessee claim for deduction on expenses for Young Tea Maintenance had been allowed in the earlier assessment years. Therefore, the contrary view cannot be taken in the present assessment year on the same issue. The ld. AR further submits that Hon'ble Jurisdictional High Court as well as ITAT held that expenses on nurseries and young tea maintenance should be considered as revenue expenditure in following cases:

i. CIT vs Tasati Tea Ltd. (262 ITR 388 Cal)

ii. Dy. CIT vs Binaguri Tea Co. Pvt. Ltd. (ITA No. 366 and 367/Kol/2011 order dated 04.01.2012-ITAT, Kolkata.)

6. On the basis of above decision rendered by the Jurisdictional High Court and Hon'ble Kolkata Tribunal, the disallowance of Rs. 30,01,809/- expenditure on account of maintenance of young tea

may be allowed as revenue expenditure. The ld. AR further placed before the Tribunal a copy of certificate dated 02.03.2023 duly signed by the General Manager of the assessee company to prove the fact that tea bushes are re-plants on the basis of tea board approval and no new areas are planted. Therefore, the claim of the assessee may be allowed.

7. On the other hand, ld. DR relied on the decision rendered by the authorities below.

8. We after examining the facts of the case and submissions of the parties, we find that in earlier years, the assessee claim for deduction of expenses for young tea maintenance had been allowed and assessee has also placed before us a certificate to prove the fact in its favour. Therefore, the view taken by the authority cannot be sustained. Accordingly, the grounds taken by the assessee is hereby allowed.

9. The other ground taken by the assessee is that the ld. CIT(A) was wrong in holding that computation of proportionate income from bought leaf had allegedly been correctly made by the assessing officer and in confirming the said computation made by the assessing officer at Rs. 1,31,63,354/- as against the proportionate loss of Rs. 2,93,571/- computed by the assessee. The ld. AR further submitted that the assessee had occurred a loss of Rs. 2,93,571/- in relation to sale of tea produced from bought leaf. However, assessing officer had wrongly calculated the sum of Rs. 1,31,63,354/- in the hands of assessee. However, the ld. CIT(A)

while passing the impugned order never discussed the issue involved in the appeal and simply dismissed the ground taken by the assessee. Therefore, the issue may remand back to the AO for fresh adjudication.

10. We after hearing the rival submission of the parties and considering the facts of the case, we find it necessary to remand the instant issue to the file of AO to decide the issue afresh after considering the submission and necessary documents produced by the assessee to substantiate its claim for de novo adjudication. Accordingly, ground taken by the assessee is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 30.10.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 30.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: New Chumta Tea Company Limited.
2. The Respondent: DCIT, Circle-4(2), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata