

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 1126/Mum/2023 (A.Y.2017-18)**

**Gurudev Texpro Dyeing Pvt. Ltd.**

C/o- Bhide Textiles Industries  
Opp. CEAT Tyre, Bhandup (W)  
Mumbai-400 078

**PAN: AAACB1567C**

..... Appellant

Vs.

**ACIT-15(1)(2)**

483A, 4<sup>th</sup> floor,  
Aayakar Bhavan,  
M. K. Road,  
Mumbai-400020

..... Respondent

Appellant by : Shri Dharan Gandhi, Ld. AR  
Respondent by : Shri Virabhandra Mahajan, Ld. DR

Date of hearing : 19/10/2023  
Date of pronouncement : 06/11/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 10.03.2023 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:-

*On the facts and circumstances of the case,*

*1. The Ld. CIT(A) has erred in directing Ld AO to ascertain the deduction of 'unclaimed VAT Refund w/off of Rs. 13,72,369/- applying provisions of Section 43B of the Income Tax Act, 1961.*

*2. The Ld. CIT (A) has erred in confirming the action of Ld. AO in disallowing Rs. 5,59,192/- on account of excess contribution to Provident Fund.*

*The Appellant craves leave to add, amend, supplement, alter and/or delete any of the above Grounds of Appeal.*

2. The brief facts of the case are that assessee company has filed its return of loss on 31.10.2017 declaring loss of Rs. (-) 1, 09, 81,701/-. Case of the assessee was selected for scrutiny and statutory notices were issued in due course. Assessee is engaged in the business of Textile Processing. Return of the assessee was assessed at a loss of Rs. (-) 83, 81,357/- after certain additions/disallowances amounting to Rs. 26, 00,344/-. Assessee being aggrieved with this order, preferred an appeal before the Ld. CIT (A), who in turn partly allowed the appeal of the assessee and for rest of the matter order of the AO is confirmed. Assessee being further aggrieved with this order preferred this present appeal before us.

3. We have gone through the order of AO, Order of Ld. CIT (A) and submissions of the assessee along with grounds raised. Ground No. 1 pertains to written off of "Unclaimed VAT" amounting to Rs. 13, 72,369/- claimed by assessee in its Profit & Loss Account.

4. Assessee's sales are exempt from VAT. Therefore, the VAT which is paid on purchases (Rs. 32, 60,568/-) is nothing but purchase cost for the Assessee and the same is allowable as a deduction as a part of purchase cost. However, the Assessee is eligible to claim refund in respect of certain portion of the VAT paid on purchases (Rs. 18, 88,200/-). Thus, certain portion of the VAT amount is eligible for refund (Rs. 18, 88,200/-) and balance portion of the VAT (Rs. 13, 72,369/-) is not eligible for refund amount. This is the claim even in the VAT return filed by the Assessee. Since, Rs. 18, 88,200 is eligible for refund; therefore, the same amount is not claimed as an expense and is directly taken as an asset in the Balance Sheet, as refund from the VAT department is receivable in future. As and when refund would be received in future, the same would be adjusted against the asset created in the Balance Sheet. This treatment is revenue neutral.

5. Alternately, Assessee can also debit the same amount to P&L A/c and claim entire amount as deduction, and offer the refund amount as income in the year of receipt. Really, if one follows section 145 and 41(1) of the Act, then Assessee is entitled to the entire amount of Rs. 32,60,568/- as deduction in the current year, by applying section 145 and to offer, the refund amount in the year in which such refund is received in terms of section 41(1). This would be detrimental to the Department. Further, the same treatment is not followed by the Assessee. The balance amount of Rs. 13,72,369/- is the amount which is a straightforward expense of the Assessee being purchase cost, as the same has been incurred and Assessee is not

entitled to any benefit on the same, and therefore, the same would be allowable as an expense and the same is debited to profit and loss A/c .

6. Finding of Ld. CIT (A) to go into the receipt of VAT and allowability u/s. 43B of the Act and work out the reconciliation does not arise in the facts of the present case. This is because, the sales of the Assessee are exempt and therefore, there is no direct payment of VAT to the State Government and therefore, there is no question of any reconciliation. Further, VAT on purchases is purchase cost and are not in the nature of tax and therefore, section 43B of the Act is not applicable on the same.

7. In view of above, it is observed that section 43B can be applied only in the cases, where assessee collects VAT from customers, and then in that case as per section 43B, amount collected has to be paid before filing of return as per the due date prescribed u/s. 139(1). Whereas in this case the amount written off by the assessee was part of purchases made by assessee, which is otherwise available for set-off against VAT liability of the assessee to be discharged by him (As collected from customers on sale). We find the treatment given by assessee to be in order, hence orders of authorities below set aside and AO is directed to allow the same. **In the result, Ground No. 1 raised by the assessee is allowed.**

8. **Ground No. 2 pertains to disallowance of Rs. 5, 59,192/- on account of excess contribution to provident fund.** Assessee's business requires not only permanent manpower on its role but also the contractual and casual labour directly had as well as taken on contract. The amount of salary claimed by the assessee amounting to Rs. 34, 84,457/- and 27% thereon will

be Rs. 9, 40,803/- as per rule 87 of the Income Tax Rule 1962. The total amount as PF contribution claimed by assessee is Rs. 14, 99,995/-. This difference to the tune of Rs. 5,59,192/- is on account of PF contributed by the assessee on his own share as well as share of contractual labour also. As per EFP and MP Act 1952, any person working for an establishment whether his on his role or otherwise, establishment will be treated as a deemed employer and contribution of PF (both employer and employee share) will be paid by the establishment. In view of this, we observed that as contractual labours usually works on a very meagre amount of salary as compared to the labour on permanent role. Secondly, the duration of labour contribution to the establishment is also very uncertain e.g. they may work for some days, some weeks or even for a part of month. In that situation, they will not allow the deemed employer to deduct their share of PF, but compliance of EPF and MP Act 1952 is always there on the head of the establishment. On this portion of employees contribution which is actually borne by the establishment ceiling of 27% as prescribed in Rule 87 of the Income Tax Rules 1962 cannot be applied here. In view of this, we find this share of contractual employee PF contribution borne by deemed employer i.e. assessee cannot be disallowed as the same has been incurred wholly and exclusively for the purposes of business and this is true complied with EPF and MP Act 1952, we find this payment is not in the nature of optional expense or gratuitous payment.

9. Rule 87 of the Income Tax Rules 1962 is there to serve a different purpose by putting a ceiling of 27%, but the same is not applicable for the situation under

discussion. In view of this, ground no. 2 raised by the assessee is allowed and AO is ordered to allow the same in the case of assessee for the purposes computation of statutory total income.

**10. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 6<sup>th</sup> day of November, 2023.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 06/11/2023

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**