

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवालेखा सदस्य के समक्ष ,
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.96/Kol/2023
(Assessment Year: 2016-17)

M/s G.S. Atwal & Co.(Engg) Pvt. Ltd.....Appellant
4B, Little Russel Street,
Kolkata- 700071.
[PAN: AABCG0816E]

vs.

DCIT, Circle-11(1), Kolkata..... Respondent

Appearances by:

Shri Soumitra Choudhury, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : November 30, 2023

Date of pronouncing the order : December 08, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.12.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 28.12.2022 is completely arbitrary, unjustified and illegal.

2. For that on the facts and circumstances of the case, the Ld. C.I.T.(A) has dittoed the appellate order for the assessment year 2015-2016 and

has taken the grounds of decision of appeal for the assessment year 2015-2016 therefore, the order passed by the Ld. C.IT.(A) is base less and should be quashed.

3. For that on the facts of the case, the Ld. C.IT. (A) was wrong in confirming the disallowance towards employees contribution towards P.F. amounting to Rs.72,53,076/- and Rs.7,17,907/, totaling at Rs.79,70,983/- which is completely arbitrary, unjustified and illegal.

4. For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the facts that the payment was made towards contribution of P.F. of Rs. 79,70,983/- before filing of the return u/s. 139(1) of the I.T. Act on 16.09.2016 or grace period within 20th of the following month, allowable u/s. 36(1) (va)/43B covered by various Court's judgements as such his finding is completely arbitrary, unjustified and illegal.

5. For that the amendment brought in by Finance Act, 2021 on this issue has been held to be prospective in nature in the case of Shri Harendra Nath Biswas (supra), therefore, Bench reiterate the same view that the amendment/explanation brought in by Finance Act, 2021 with effect from 01.04.2021 on this issue is prospective; and taking note that the relevant assessment year i.e. 2015-16 the ibid explanation brought in by Finance Act, 2021, cannot be used/applied to unsettle the settled position of law passed by the Hon'ble jurisdictional High Court in the case of Vijayshree Ltd. (supra), since there is no retrospective legislative over-ruling. Therefore, the finding of the Ld. CIT(A) is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the A.O. was wrong in disallowance assessment order of interest on TDS at Rs.10,42,614/-, Interest on VAT at Rs.3,660/-, Interest on Entry Tax at Rs.653/-, Interest on Service Tax at Rs.16,83,379/-, Interest on Service Tax RCM at Rs.30,310/-, Interest on SB ST at Rs.13,991/-, Interest on P.F. at Rs.83/-, totaling at Rs.27,74,688/- which is an allowable expenditure u/s. 37 of the I.T. Act, but the Ld. CIT(A) has mentioned in its order that appellant gets relief Rs.6,33,923 /-, out of addition Rs.10,17,713/- and addition sustained Rs.3,83,790/- on account of interest on P.F. which is dittoing the appellate order for the assessment year 2015-16, as such his finding is completely arbitrary, unjustified and illegal.

7. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal.”

3. At the outset, the ld. Counsel for the assessee for the assessee has submitted that as per instruction of his client, he does not pressed

Ground nos.1, 3, 4 & 5. Ground Nos.1, 3, 4 & 5 are dismissed as not pressed.

4. Regarding Ground nos.2 & 6, the only contention raised by the ld. AR is that the Assessing Officer has disallowed the interest expenditure in relation to interest on TDS at Rs.10,42,614/-, Interest on VAT at Rs.3,660/-, Interest on Entry Tax at Rs.653/-, Interest on Service Tax at Rs.16,83,379/-, Interest on Service Tax RCM at Rs.30,310/-, Interest on SB ST at Rs.13,991/-, Interest on P.F. at Rs.83/-, totaling at Rs.27,74,688/-.

5. The ld. Counsel for the assessee has fairly admitted that so far as the interest expenditure on delayed deposit of ESI & PF was concerned, the same was not admissible to the assessee.

6. However, in relation to interest expenditure incurred on other items, the ld. counsel has contended that the Assessing Officer has already allowed the interest expenditure on these items in the assessment carried out in relation to the earlier assessment year i.e. A.Y 2015-16. He has submitted that the said interest expenditure is admissible deduction.

7. We note that the Coordinate Bench of the Tribunal in the case of Premier Irrigation Adritec (P.) Ltd. v. ACIT reported in [2023] 146 taxmann.com 389 (Kolkata - Trib.) (one of us i.e. the Judicial Member, being the author of the said order) has held that the interest payment on delayed deposit of Income Tax including TDS is not allowable expenditure. In view of this, Ground No.6 of the assessee's appeal is partly allowed to the extent that the assessee is entitled to the

deduction of the interest expenditure in respect of Interest on VAT, Interest on Entry Tax, Interest on Service Tax, Interest on Service Tax RCM and Interest on SB ST.

5. In view of our above observation, the appeal of the assessee is treated as partly allowed.

Kolkata, the 8th December, 2023.

Sd/-
[गिरीश अग्रवाल/Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग/Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 08.12.2023.
RS

Copy of the order forwarded to:
1. M/s G.S. Atwal & Co.(Engg) Pvt. Ltd
2. DCIT, Circle-11(1), Kolkata
3.CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches