



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE ‘B’ BENCH, PUNE
BEFORE HON’BLE SHRI PARTHA SARATHI CHOUDHURY, JUDICIAL MEMBER
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.957/PUN/2023

निर्धारण वर्ष / Assessment Year : 2019-20

M/s Sharp Aluminium

F-41, S.No. 28/29 Shrushti,

Guruganesh Nagar, Kothrud Pune-411038.

PAN: ACZFS2580G

.....अपीलार्थी / *Appellant*

बनाम / V/s

Asstt. Commissioner of Income Tax

Circle-2, Pune

..... प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by : Mr MK Kulkarni & JR Chandekar

Revenue by : Mr MG Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 05/12/2023

घोषणा की तारीख / Date of Pronouncement : 11/12/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of appellant instituted u/s 253(1)(a) of the Income-tax Act, 1961 [for short ‘the Act’] challenges DIN & order No. ITBA/NFAC/S/250/2023-24/1054132806(1) dt. 05/07/2023 passed by National Faceless Appeal Centre [for short ‘Ld. NFAC’] u/s 250(6) of the Act which in turn ascended out of order of intimation passed u/s 143(1) of the Act by Centralised Processing Centre, Bengaluru [for short ‘Ld. CPC’] .



2. Briefly stated facts of the present case are that;

2.1 The appellant assessee is a resident partnership firm filed its return of income [for short 'ITR'] on 29/07/2020 u/s 139(4) of the Act declaring total income ₹1,91,15110/-. For AY under consideration, the CBDT extended the due date of filing ITR from 30/09/2019 to 30/10/2019. On the basis of Tax Audit Report [for short 'TAR'] the Ld. CPC disallowed a sum of ₹1,69,63,968/- u/s 43B of the Act for assessee's failure to discharge statutory dues by actual payment within the due date of filing as prescribed u/s 139(1) of the Act and processed its ITR determining total income at ₹3,60,79,078/-..

2.2 Aggrieved assessee instituted appeal before first appellate authority, wherein Ld. NFAC, after considering appellant's elaborate submission has confirmed the disallowance and dismissed the appeal observing as under;

"4.5 I have been considered the above facts show that on which case the appellant has relied it is related to exemption which is denied for in toto. Whereas in case of section 43B it is the year which is to be considered for allowabilities based on the year of expenditure. Allowability not denied assets. Therefore, the case laws cited by the appellant are not acceptable.

*4.5 I have been considered the above facts submitted by the appellant shows that the **appellant filed his return of income on 27/07/2020 u/s 139(4)** whereas the **due date for filing original return was 30.09.2019** as per provision of section 139(1) of the Act. As per provision of section 43B of the Act provided that "nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return." In this*



case, the appellant filed his GSTR on or after due date of IT us 139(1) of the Act. On perusal of intimation us 143(1) of the Act issued by CPC in this case seen that the appellant has disclosed his total income under the head PGBP amounting to Rs.1,91,15,110/- only whereas the disallowance of expenditure indicated in the audit report amounting to Rs. 1,69,63,968/-but not taken into account in computing the total income in his return under the head PGBP.

4.6 Keeping in view of above it is concluded that the CPC has rightly made addition / disallowed of Rs. 1,69,63,970/- u/s 43B of the Income Tax Act, 1961 and the same is upheld. The appeal of the appellant is dismissed.”

(Emphasis supplied)

3. During the course of hearing, Ld. AR Mr Kulkarni reiterated appellant's all arguments which were taken before first appellate authority. It is argued that, it is well settled law that belated ITR filed u/s 139(4) of the Act for all purpose is to be treated as filed u/s 139(1) of the Act and once it is so, belated payment of Good & Service Tax [for short 'GST'] is protected from disallowance u/s 43B of the Act. Both the tax authorities below however failed to appreciate the law properly, therefore have erred in disallowing entire amount of GST for not discharging the same before the expiry of prescribed due date u/s 139(1) of the Act. *Per contra*, the Ld. DR solidifying facts of the case has submitted that, the issue of disallowance of statutory dues/taxes paid after the expiry due date of filing as prescribed u/s 139(1) of the Act is no-more *res-integra* in the light of decision of various high courts hence the action of disallowance by tax authorities cannot be faulted with. The Ld. DR also negated the application of case laws relied by the appellant on the grounds of distinguishability of facts.



4. Heard rival contentions; subject to provisions of rule 18 of ITAT Rules, perused material placed on records, case laws relied and duly considered facts of the case in light of settled legal position, which are forewarned to parties present.

5. It is nobody's case that belated payment of GST being statutory dues falling within clause (a) of section 43B is not subjected to disallowance. The only question we need to answer is that, whether ITR filed u/s 139(4) can be treated as filed u/s 139(1) for the purpose of section 43B of the Act? In simple terms *'as to whether discharge or actual payment of expenditure/liability made any time after the expiry of due date or extended due date prescribed u/s 139(1) of the Act but before filing of ITR u/s 139(4) of the Act qualifies for deduction in computing income u/c IV-D without attracting provisions of section 43B of the Act?'*

6. It is well settled law that, items of expenditure/liability subscribed u/c (a) to (g) in section 43B of the Act which are otherwise allowed as deductions while computing business income u/c IV-D of the Act, shall indeed be allowed in a previous year in which such sums are actually paid irrespective of financial year in which liability towards was incurred. The proviso to section 43B eases the hardship by extending such period upto the due date of filing ITR as prescribed u/s 139(1) of the Act. In nutshell any expenditure which is otherwise allowed as deduction in computing taxable income u/c IV-D is subjected to actual payment within the due date prescribed u/s 139(1) of the Act irrespective of method of accounting employed by assessee.



7. At this juncture it is apt to quote here the ratio of Hon'ble Delhi High Court in '*CIT Vs Narendra Anand*' reported in 332 ITR 483 wherein their Lordships have categorically laid that '***any payment of expenditure made before expiry of extended due date of filing prescribed u/s 139(1) of the Act is also treated as good compliance and sufficient to defuse application of section 43B for disallowance.***' That means so long as there is an extended period of time granted to assessee u/s 139(1) of the Act, all acts done within that extended period must be deemed to have been done within the prescribed period of time as originally stipulated therein. **Thus, no disallowance u/s 43B of the Act is attracted if payment of liability/expenditure is discharged any time before expiry of extended due date of filing u/s 139(1) of the Act.**

8. The solitary contention of the assessee is to treat return filed u/s 139(4) as filed u/s 139(1) for the purpose of section 43B of the Act attempts to give go-by to overriding provision of law so has to avail additional time over the time period statutorily allowed to it for discharging liability towards expenditure debited to profit & loss account. This however fails to evoke our concurrence for the reasons that, section 43B opens with a non-obstante clause under the heading '*certain deductions to be only on actual payment*'. As per settled principles of interpretation, a non-obstante clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by the Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for.



9. Out of the allowable deductions, the legislature consciously earmarked certain deductions from time to time and included them in the ambit of Section 43B so as to subject such deductions to conditionality of actual payment by the due date of filing prescribed u/s 139(1) of the Act. Since the objective of 43B provision is to ensure that a tax-payer does not avail of any deduction towards statutory liability without actually making a payment for the same. Therefore, we are of the considered view that these objectives would be served if the deduction for the statutory liability relating item (a) to (g) of section 43B are allowed in the year of its claim if it is paid **either** (i) in the year of claim i.e. previous year **or** (ii) within the due date prescribed u/s 139(1) of the Act **or** (iii) within the extended due date prescribed u/s 139(1) of the Act. And importantly, if it is paid otherwise than in aforesaid time limit (i), (ii) or (iii), then is entitled to deduction in the year of its actual payment irrespective of year in which expenditure/liability towards was incurred.

10. In the instant case, admittedly the due date of filing ITR u/s 139(1) for AY 2019-20 was 30/09/2019 which was extended further by a month to 30/10/2019. The appellant however filed its ITR after the expiry of aforesaid extended due date on 29/07/2020 wherein a claim against GST liability was made which by provisions of section 43B of the Act was subject matter of actual payment any-time before expiry of aforesaid extended due date. Failing to which the Ld. CPC disallowed the claim for deduction u/s 43B of the Act on the basis of accountants report through TAR.



11. We see this action of disallowance by prima facie adjustment in summary assessment u/s 143(1)(a) of the Act finds support from 'Sri Jawahar Lal Gupta Vs ITO' reported [1993] 199 ITR 726 (All.) and also finds support from CBDT Circular No. 601, dt 04/06/1991, which Ld. AR could hardly dispute during any of the proceedings including present one. However when matter travelled in an appeal to first appellate authority, the Ld. NFAC perfunctorily confirmed the disallowance on the basis of delayed filing of GST return without vouching the exact amount of GST discharged by extended due date i.e. 30/10/2019 and balance amount of GST paid beyond such extended due date for confirming disallowance u/s 43B of the Act. For the reason we see strong force in remanding the matter back to the file of Ld. NFAC with a direction to deal this limited issue in accordance with aforesaid law & pass a speaking order in terms of section 250(6) of the Act.

12. In result, the appeal of the assessee is allowed for statistical purposes.
U/r 34 of ITAT Rules, order pronounced in open court on this Monday 11th day of December, 2023.

-S/d-

PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 11th day of December, 2023.

आदेशकीप्रतिलिपिअग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr.CIT(Exemption),Pune

4. The CIT-Concerned (MH-India)

5. DR, ITAT, Pune Bench 'B', Pune

6.गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठनिजीसचिव / Sr. Private Secretary

आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.