

आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Girish Agrawal, Accountant Member]

I.T.A. No. 1339/Kol/2023
Assessment Year: 2020-21

Manaksia Limited (PAN: AAACH 6882 J)	Vs.	CPC, Bengaluru
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	06.02.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Yash Khattry, A.R
For the Respondent/ राजस्व की ओर से	Shri Ajoy Robin Singh, JCIT

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 11.10.2023 of the Commissioner of Income Tax (Appeals)-2, Mumbai [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. *On the facts and circumstances of the case & in law, ld. Commissioner of Income Tax (Appeals) was not justified and grossly erred in confirming the action of the Ld. CPC, Bengaluru in disallowing payment of gratuity amounting to INR 71,59,326/- without appreciating the fact that the said provisions being offered to tax in preceding years in allowable on payment basis in the current assessment year.*

2. *On the facts and circumstances of the case & in law, Ld. Commissioner of Income (Appeal) was not justified and grossly erred in confirming the action of the Ld. CPC, Bengaluru, that non-filing of Form 67 before filing the Return of Income is a procedural defect and the appellant cannot be denied foreign tax credit amounting to INR 1,05,737/- provided under the Income tax Act on account of such procedural lapse.*

3. *On the facts and circumstances of the case & in law, Ld. commissioner Of Income Tax (Appeals) was not justified and grossly erred in confirming the action of the Ld. CPC, Bengaluru without providing an opportunity of being heard to the appellant.*

4. *That the appellant craves leave to add to and to alter, amend, rescind or modify the grounds raised hereinabove before or at the time of hearing.*

3. Ground No.1: The assessee vide Ground no. 1 has agitated against the disallowance of Rs. 71,59,326/- made by the AO on account of disallowance of payment of gratuity.

4. At the outset, Mr. Shri Yash Khattry, ld. Counsel for the assessee has submitted that the aforesaid liability of the assessee was of the earlier years, however, the same was disallowed at that time as the payment was not actually made. However during the year the payment was made of the earlier liability therefore, the AO was not justified in making the impugned disallowance.

5. The Ld. D.R has however, pointed out that the Ld. CIT(A) has gone through the audit report of the earlier AY 2019-20 and found that the assessee has not disallowed any amount in the earlier assessment year u/s 43B of the Act. In rebuttal, the Ld. A.R has submitted that the amount of gratuity paid during the year was a pre-existing liability pertaining to earlier assessment year. That the Ld. CIT(A) has referred to audit report of AY 2019-20 only whereas the liability is of other years also. He has further submitted that the assessee may be given an opportunity to prove his contention before the Ld. CIT(A) by furnishing of necessary details in this respect.

6. We have considered the rival contentions. It is the categorical stand of the Ld. A.R that out of total deposit amount of Rs. 85.54 lakhs, amount of gratuity deposit this year included the pre-existing liability pertaining to earlier years which was disallowed by the assessee u/s 43B of the Act. The matter is accordingly restored back to the file of Ld. CIT(A) to examine and verify the aforesaid contention of the assessee and if the same is found correct then to allow the necessary relief to the assessee accordingly.

7. Ground no. 2: The assessee has agitated against the confirmation of disallowance of Rs. 1,05,737/- on account of foreign tax credit for late filing of Form 67.

8. The Ld. A.R of the assessee has submitted that the late filing of Form 67 was procedural irregularity and not illegality.

9. We find force in the aforesaid contention of the Ld. A.R in this case. The assessee has claimed foreign tax credit amounting to Rs. 1,05,737/-. Though the assessee has filed original return of income on 15.02.2021 however, the Form 67 was filed on 21.04.201, which was very much available to the

AO/CPC at the time of processing of return. The aforesaid factual position was also brought before the Ld. CIT(A). In our view, the late filing of Form 67 was just a procedural irregularity and not illegality. Therefore the AO is directed to allow the correct foreign tax credit amounting to Rs. 1,05,737/-.

10. Ground no. 3 is general in nature and does not need any adjudication.

11. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order is pronounced in the open court on 9th February, 2024

Sd/-
(Girish Agrawal/ गिरीश अग्रवाल)
Accountant Member/लेखा सदस्य

Sd/-
(Sanjay Garg / संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Dated: 9th February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Manaksia Limited, Turner Morrison Building, 6, Lyons Range, Kolkata-700001
2. Respondent – CPC, Bengaluru
3. Ld. CIT(A)- 2, Mumbai
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata