

**THE INCOME TAX APPELLATE TRIBUNAL,
'B (SMC)' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1403/KOL/2023
Assessment Year: 2012-2013**

***Bina Metal Way Pvt. Ltd.,.....Appellant
AH-138, Salt Lake, Sector-II,
Kolkata-700091, West Bengal
[PAN: AABCB1511D]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Manish Tiwari, A.R., appeared on behalf of the
assessee*

*Shri Anindya Kumar Bandopadhyay, Addl. CIT,
appeared on behalf of the Revenue*

**Date of concluding the hearing : February 20, 2024
Date of pronouncing the order : February 20, 2024**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 16.11.2023 passed for A.Y. 2012-13.

2. The assessee has taken four grounds of appeal, but in brief, it has two grievances, namely-

(a) The ld. CIT(Appeals) has erred in not setting off the disallowance made on account of non-deposit of PF & ESI employees' contributions well in time against the loss determined by the ld. Assessing Officer.

(b) The ld. CIT(Appeals) has erred in not deciding the issue whether the assessee is entitled for TDS Credit or not.

3. Brief facts of the case are that the assessee has filed its return of income on 30.09.2012 declaring a loss of Rs.2,61,12,312/-. The case of the assessee was selected for scrutiny assessment and notices under section 143(2) and 142(1) were issued and served upon the assessee. The ld. Assessing Officer has passed an assessment order on 29.03.2015. The ld. Assessing Officer has determined the total income of the assessee at (-)Rs.2,50,54,350/- and book profit at Rs.1,04,873/-.

4. Ld. Counsel for the assessee has appraised us that since TDS credit at Rs.15,44,739/- was not granted to the assessee, the assessee has applied under section 154 of the Income Tax Act. The ld. Assessing Officer though not considered the prayer of the assessee but made a disallowance out of PF & ESI contributions of employees'. In this way, ld. Assessing Officer has

disallowed Rs.2,20,570/- and did not grant TDS credit to the assessee.

5. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

6. On due consideration of the facts and circumstances of the case, we are of the view that any disallowance made on account of non-payment of employees' contributions in the P.F. & ESI accounts within the due date provided under those Acts would be set off against the ultimate disallowance determined by the ld. Assessing Officer. In other words, the loss of Rs.2,50,54,350/- is to be reduced by an amount of Rs.2,20,570/-. The balance will be computed and would be carried forward.

7. As far as the second issue is concerned, the grievance of the assessee for grant of TDS credit has not decided by the ld. CIT(Appeals). On due consideration of the facts and circumstances of the case, we relegate this issue to the file of ld. Assessing Officer for verification and grant of TDS credit.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20/02/2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 20th day of February, 2024

- Copies to :*(1) *Bina Metal Way Pvt. Ltd.,*
AH-138, Salt Lake, Sector-II,
Kolkata-700091, West Bengal
- (2) *Deputy Commissioner of Income Tax,*
Circle-1(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069
- (3) *Commissioner of Income Tax (Appeals),*
National Faceless Appeal Centre (NFAC), Delhi;
- (4) *CIT- , Kolkata*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.