

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1189/Kol/2019
Assessment Year : 2014-15

DCIT, Circle-1(2), Kolkata	vs	M/s. The Barnagore Jute Factory PLC PAN: AABCT 0134 C
Appellant		Respondent

Date of Hearing	19.02.2024
Date of Pronouncement	19.02.2024
For the Assessee	Mr. Siddharth Agarwal, Advocate
For the Revenue	Mr. Rakesh Kumar Das

ORDER

Per Sonjoy Sarma, JM:

This appeal of the revenue for the assessment year 2014-15 is directed against the order dated 26.02.2019 passed by the Id. Commissioner of Income-tax (Appeals) – 12, Kolkata [hereinafter referred to as 'the Id. CIT(A)']. The revenue has raised the following grounds of appeal:

"i. That on the facts and circumstances of the case as well as on law Ld. CIT(A) has erred in granting relief to the assessee on account of interest accrued of Rs.7, 18,54,3 11/- (Rs. 7,06,22,366/- + 12,3 1,955/-) on compensation awarded shown in the Balance Sheet as an asset (F.D.) and loans & advances lying in court custody.

ii. That on the facts and circumstances of the case and on law Ld. CIT(A) has erred in granting relief to the assessee of Rs. 49,24,735/- on employees contribution towards EPF & ESIC Fund u/s 36(1)(va) r.w.s. 2(24)(x) and CBDT's circular No. 22/2015 dt. 17/12/2015.

iii. That on the facts and circumstances of the case and on law Ld. CIT(A) has erred in granting relief to the assessee on account of "sundry balances written off " of Rs. 21,21,895/- without allowing opportunity to the presuming that details were with A.O, where it is admitted that supporting ledger was filed first time in appeal.

iv. The appellant Craves the leave to make any addition, alteration modification etc. of grounds either before the appellate proceedings, or in the course of appellate proceedings.”

2. At the outset, we find that there is a delay of 5 days in filing of the appeal by the revenue. We after perusing the petition for condonation are convinced that the revenue was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that the assessee filed its return of income showing total loss of Rs. 61,38,399/-. The case of the assessee was selected for scrutiny through CASS followed by notices issued u/s 143(2) and 142(1) of the Act by which calling various documents, details as well as evidences in respect of various claims made by the assessee. In response to the notices, the ld. AR appeared before the AO time to time in order to represent the case of the assessee by filing various details, explanations in terms of various queries raised by the AO, assessing the income of the assessee making an addition in following manner:

		Rs.	Rs.
Add:	Total loss disclosed as per return of income		61,38,399/-
Add:	Disallowance u/s 36(1)(va) read with section 2(24) (x) as discussed in para 2 above.		49,24,735/-
Add:	Disallowance of CST charge as discussed in para 3 above.		20,07,969/-
Add:	Sundry balance written off - as discussed in para 4 above.		21,21,895/-
Add:	Disallowance of Donation as discussed in para 5 above.		2,287/-
Add:	Prior period adjustment - as discussed in para 6 above.		1,20,350/-

Add:	Undisclosed accrued interest income on the fixed deposit place with sole arbitrator as discussed in para 7 above.		12,31,955/-
Add:	Undisclosed accrued interest income on the fixed deposit place with Registrar, Calcutta High Court - as discussed in para 8 above.		7,06,22,356/-
	Assessed Total Income		7,48,93,148/-
	Rounded off u/s.288A		7,48,93,150/-

4. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed by deleting certain additions as made by the AO while framing the assessment order.

5. Dissatisfied with the above order, revenue is in appeal before this Tribunal raising multiple grounds of appeal. However ground no. 1 is relating to allowing relief to the assessee on account of issue of interest earned of Rs. 7,18,54,311/- (Rs. 7,06,22,366/- + Rs. 12,31,955/-) on compensation awarded shown in the balance sheet as an asset (FD). However, assessee has failed to disclose the same as an income in its profit & loss account. Therefore, such deletion made by the ld. CIT(A) is not correct while passing the impugned order in favour of the assessee. The ld. DR stated before the bench that the assessee maintained its books of accounts under mercantile system. Therefore, it is necessary on the part of assessee to offer such accrued interest as its income for the assessment year in question. However, assessee did not do so, therefore, the ld. AO correctly made the alleged addition in the hands of assessee. Accordingly, the view taken by ld. CIT(A) is not correct and liable to be set aside by this Tribunal allowing the appeal of the revenue.

6. On the other hand, ld. AR submitted before the bench that the alleged amount of addition as made in the case of assessee Rs. 12,31,988/- is lying with the arbitrator and still under the dispute. Therefore, there is no question of making such addition in the hands of assessee as an income. Similarly in respect of addition of Rs. 7,06,22,356/- while allowing the claim of assessee, ld. CIT(A) clearly cited the Board's Circular No. 23/2015 dated 28.12.2015 where it was clearly stated regarding the chargeability of interest involved to be only in the year when final order is passed releasing money to the rightful beneficiary. Therefore, the view taken by the ld. CIT(A) while passing the impugned order in favour of the assessee in relation to the above issue is correct and Tribunal need not required to be interfered in the above issue.

7. We after hearing the rival submission of the parties and perused the material available on record find that the issue regarding the accrued interest is still pending before appropriate forum for final adjudication and till releasing the money to rightly beneficiary one cannot claim same as its income. Therefore, the view taken by ld. CIT(A) by deleting the addition taking into consideration of Board's Circular No. 23/2015 in favour of the assessee is correct. We therefore, do not find any infirmity in the order passed by ld. CIT(A) accordingly the issue raised by the revenue is hereby dismissed.

8. In ground no. 2 regarding granting relief to the assessee to the extent of Rs. 49,24,735/- on account of employees contribution towards EPF & ESIC Fund u/s 36(1)(va) r.w.s. 2(24)(x) and CBDT's

Circular No. 22/2015 dated 17.12.2015 is not correct therefore needs to be deleted by the bench. On this issue, both the parties have agreed that since the issue is relating to delayed payment of EPF & ESIC fund come to rest by the order of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. and is covered against the assessee. Accordingly, we following the same in the instant issue is covered in favour of the revenue by allowing the ground taken by revenue.

9. Ground no. 3 is in relation to granting relief to the assessee on account of sundry balances written off of Rs. 21,21,895/- without allowing any opportunity to the AO where in the present case it is admitted position is that the supporting copy of ledger was filed first time before the ld. CIT(A). Therefore, we feel it necessary to remand back the instant issue to the file of ld. AO with the direction to re-examine the issue after giving reasonable opportunity to the assessee of being heard and decide the same by examining the documents furnished by assessee in support of its claim. In terms of the above, the appeal of the revenue is hereby partly allowed.

10. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 19.02.2024

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 19.02.2024
Biswajit, Sr. PS

ITA No. 1189/Kol/2019
AY: 2014-15
M/s. The Barnagore Jute Factory PLC

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-1(2), Kolkata.
2. Respondent – M/s. The Barnagore Jute Factory PLC, 284,
Maharaja Nanda Kumar Road, Alambazar, Kolkata-700085.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata