

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 721 /Kol/2023
Assessment Year: 2022-23

GNB Motors Private Limited 1, Lu Shun Sarani Todi Mansion 9 th Floor Kolkata - 700073 [PAN: AAACG9149H]	Vs	Income Tax Officer, Ward - 13(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Ray, A.R.
Revenue by :	Shri B.K. Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख/Date of Pronouncement : 19/02/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "Id. CIT(A)"] dt. 13/06/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2022-23.

2. The assessee has raised the following grounds of appeal:-

"1. For that on the facts and in the circumstances of the case the Ld CIT(Appeals) NFAC was wrong in confirming the disallowance of Rs 25,99,097/- break up of which as follows :

a) U/S 37 (2b) in respect of advertisement - Rs 25,38,991/-

b) U/S 36(l)(va) in respect of delay in payment of provident Fund- Rs 2,40,106/-

2. For that on the facts and in the circumstances of the case the Ld. CIT(Appeals) was wrong in not considering submissions made before him by the appellant in respect of disallowance of advertisement expenses of Rs 25,38,991/- and the certificate of the Auditor stating that the expenses were not made to the political parties.

3. For that on the facts and in the circumstances of the case the Ld. IT(Appeals) was wrong in not considering the submission made by appellant, that there was no delay in payment of provident fund of Rs 2,40,106/- which was deposited on 12.04.2022 (within due date) and was certified by the Auditor.

4. For that the appellant craves leave to adduce and/or alter further ground/s on or before hearing of appeal."

3. First issue for our consideration is regarding disallowance u/s 37(2b) of the Act at Rs.25,38,991/- paid towards advertisements to political party. We have heard rival contentions and perused the record placed before us. We notice that the assessee is a private limited company engaged in business of dealing in commercial vehicles and its accessories and furnished its return of income for Assessment Year 2022-23 on 05/11/2022. Case processed u/s 143(1)(a) of the Act. In the said processing, which was carried out after considering the observation of the auditor in the tax audit report prepared u/s 44AB of the Act, the CPC noticed that in column 21(b), under the head advertisement expenditure in any souvenir, brochure, tract, pamphlet or the like published by a political party a sum of Rs.25,38,991/- was mentioned. Based on this noting of the auditor, the alleged disallowance was made. When the assessee challenged the issue before the Id. CIT(A), it filed the details claiming that no amount was paid to political party and it was an inadvertent mistake committed by the auditor. However, the Id. CIT(A) did not give any relief.

4. Before us, the assessee has now challenged the said issue. Reference has been made to various details filed in the paper book containing 79 pages. At page 10, the auditor K. Prasad & Company, vide certificate dt. 28/12/2022 admitted that it was an apparent mistake and the assessee has not made any payment towards political party. Our attention was also drawn at page 12-13 of the paper book which provide for the details of expenses incurred during the year. Perusal of the same indicates that they have been incurred mostly for purchase of signage for workshop, gifts for financiers, purchase of panels and posters etc.. All these details show that none have been incurred for a political party. Under these given facts and circumstances, and the revenue being unable to controvert this fact, we are inclined to hold that typographical/inadvertent mistake of the auditor led to the alleged disallowance u/s 37(2b) of the Act made by the CPC. Since no such expenditure have been incurred which are liable to be disallowed u/s 37(2b) of the Act, the finding of the Id. CIT(A) set aside and disallowance of Rs.25,38,991/- is deleted. Effective Ground No. 2 raised by the assessee is allowed.

5. Second issue for our consideration is disallowance u/s 36(1)(va) of the Act at Rs.2,40,106/- made for delay in payment of provident fund. We have heard rival contentions and perused the material placed before us. The alleged disallowance u/s 36(1)(va) of the Act is also made on the basis of auditors observation in the tax auditor's report which has been captured by the CPC while processing the return through computer software mode. The disallowance has been made for delay in payment

of Rs.2,40,106/- which is stated to have been paid after the due date. The due date for the payment is 15/04/2022. As per the auditor's report, the date mentioned in 18/04/2022. This resulted in the alleged disallowance. The assessee failed to get any relief before the Id. CIT(A). Before us, the assessee has filed copy of the challan for payment of provident fund amount of Rs.2,40,106/- and the same is placed at page 11 of the paper book and it was shown that actual date of payment is 12/04/2022. The auditor, K. Prasad & Co., has certified to this effect also stating that inadvertently in place of 12/04/2022, the date has been mentioned as 18/04/2022 and the correct date is 12/04/2022 which is before the due date. Since this fact is discernible from the records available before us, we find that the alleged sum of Rs.2,40,106/- has been paid on 12/04/2022 which is prior to due date of 15/04/2022 and thus, no disallowance is called for u/s 36(1)(va) of the Act. Finding of the Id. CIT(A) is set aside and disallowance u/s 36(1)(va) of Rs.2,40,106/- is stands deleted. Effective Ground No. 3 raised by the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 19th February, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 19/02/2024

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata