

आयकर अपीलिय अधिकरण
मुंबई पीठ " एफ ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " F ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आसं. 3033/मुं/2023 (नि. व. 2021-22)
ITA NO.3033/MUM/2023(A.Y.2021-22)

Dy. Commissioner of Income Tax
Circle 6(1)(2), Mumbai,
Room No.506, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020.

..... अपीलार्थी/ Appellant

बनाम Vs.

M/s. Franklin Templeton International
Services (India) Pvt. Ltd.,
Tower 2, 13th Floor, One International Centre,
SB Marg, Elphinstone West,
Delsle Road, S.O, Mumbai 400 013.
PAN: AAACF-6496-L

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ankush Kapoor, CIT DR.
प्रतिवादीद्वारा/ Respondent by : S/Shri Anish Takkar & Lekh Mehta
सुनवाई की तिथि/ Date of hearing : 19/03/2024
घोषणा की तिथि/ Date of pronouncement : 20/03/2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)] dated 30/06/2023, for the Assessment Year 2021-22.

2. The solitary ground raised by the Revenue in appeal is against the directions of the CIT(A) in deleting addition made u/s. 43B of the Income Tax Act, 1961 [in short 'the Act'].

3. Shri Ankush Kapoor representing the Department submitted that return of the assessee was processed u/s. 143(1) of the Act. The CPC had made disallowance u/s. 43B of the Act in respect of:

- Stock Bonus and Employees stock investment plant – Rs.3,95,91,992/-
- Gratuity - Rs. 9,80,00,000/-
- Leave Encashment - Rs.1,75,10,428/-

The CIT(A) erred in directing the Assessing Officer to verify from books of account of the assessee whether the disallowance made u/s. 43B of the Act was claimed in earlier years. He submitted that the CIT(A) has failed to appreciate the fact that deduction u/s. 43B of the Act can only be claimed on the basis of actual payment during the current year. Hence, the directions of the CIT(A) are contrary to the provisions of section 43B of the Act.

4. Per contra, Shri Anish Takkar appearing on behalf of the assessee vehemently defended the impugned order. The Id. Authorized Representative of the assessee referring to Tax Audit Report relevant to Assessment Year 2021-22 submits that in Column 26 of the report(at page 31 of the paper book) the Auditors have specifically mentioned about the liabilities u/s. 43B of the Act , the amounts which were actually paid during previous the year and not paid during the previous year.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The CIT(A) while adjudicating assessee's

ground with regard to disallowance made u/s. 43B of the Act has restored the issue back to the Assessing Officer with following directions:

“4.3 Section 43B is related to the head 'Income from business and profession'. It states some statutory expenses that can be claimed as deduction from the business income only in the year of actual payment irrespective of the year of accrual of its liability.

4.4 Keeping in view of the above facts, the AO is directed to verify from books of account of the appellant that the disallowance made under section 43B of the Act has not been claimed in earlier years in relation to the stock bonus and employee stock incentive plan, gratuity and leave encashment which has been claimed in the year under consideration and delete these addition made under section 43B of the Act if found to have not been claimed in earlier years. Ground No.2 is allowed for statistical purpose.”

A perusal of the aforesaid directions would show that the CIT(A) has categorically mentioned that deduction u/s. 43B of the Act is allowable from the business income only in the year of actual payment irrespective of the year of accrual of the liability. We see no ambiguity in directions of the CIT(A), nor such directions are contrary to the provisions of section 43B. The ground raised by the Department in appeal is misplaced. We find no merit in appeal by the Department, hence, dismissed.

6. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Wednesday the 20th day of March, 2024.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 20/03/2024
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) ITAT, Mumbai