

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1401/Del/2021
Assessment Year 2018-19

Dhanuka Agritech Ltd. 82, 1 st Floor, Abhinash Mansion Joshi Road, Karol Bagh New Delhi.	Vs.	ACIT, Circle-2 New Delhi
TAN/PAN: AAACD0105G		
(Appellant)		(Respondent)

Applicant by:	Ms. Aabgina Chisti, Advocate Shri Gaurav Sachdeva, Chartered Accountant		
Respondent by:	Shri Amit Katoch, CIT-DR		
Date of hearing:	09	04	2024
Date of pronouncement:	19	04	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-XXIII, New Delhi ('CIT(A)' in short) dated 11.08.2021 arising from the assessment order dated 19.03.2021 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

2. When the matter was called for hearing, the Id. counsel for the assessee submitted that although several grounds has been raised, she seeks to press Ground No.1.3 only and other grounds may be ignored for the purposes of adjudication.

3. In the light of the submissions made, other grounds are dismissed as not pressed and Ground No.1.3 is reproduced hereunder:

"1.3 That on the facts and in the circumstances of the case, the CIT(A) ought to grant the claim of Excise duty refund is non-taxable under the normal provisions of the Act."

4. With reference to Ground No.1.3 of the appeal, the Id. counsel pointed out that the issue concerns non taxability on Excise duty subsidy which was wrongly offered as taxable income of revenue character in return of income by the assessee. The issue was however raised before the CIT(A) on correct appreciation of facts by assessee. The CIT(A) has summarily however disposed of the aforesaid ground against the assessee as per paragraph 4.4.3 of the first appellate order. The Id. counsel submitted that the CIT(A) has rejected the contention of the assessee towards non taxability of Excise Duty subsidy solely on the ground that no claim was made before the AO at any stage that such Excise Duty subsidy is capital in nature and thus not taxable in the absence of any claim before AO, the CIT(A) held that the grievance of the assessee is not maintainable before him. The Id. counsel referred to the several judgments to submit that the tax can be collected only in accordance with law and mere inclusion of such Excise Duty subsidy as taxable income under misconception of law, by itself, will not render such incorrect classification of income as taxable event.

5. The Id. DR for the Revenue did not raise any serious objection to the averments made on behalf of the assessee and submitted that the issue may be decided in accordance with jurisprudence available in such matters.

6. We have carefully considered the rival submissions and perused the material available on record.

7. As stated on behalf of the assessee, the Excise Duty subsidy received by the assessee was wrongly declared as revenue income by the assessee and incorrectly offered to taxation as chargeable income while filing the return of income. The assessee contends that such Excise Duty subsidy is essentially capital in nature and thus not liable to taxation although wrongly offered as taxable income while filing the return of income. The assessee has raised such claim before the CIT(A). The CIT(A) has dealt with the issue as under:

“4.4.3 I have considered facts of the case as well as written submission of the appellant. The appellant itself offered excise duty received of Rs.7,44,19,720/- in its return of income. Even during assessment proceedings, no claim was made before Assessing Officer that the amount is not taxable. In view of these facts, this ground of appeal does not arise from the order of the Assessing Officer and is not maintainable. Hence, Ground No.4 of the appeal is dismissed.”

8. As can be seen, the CIT(A) has denied to entertain such claim of the assessee on the ground that such claim was neither made before the AO in the assessment proceedings nor the ROI was revised. The assessee states that the higher taxable income has been offered by including Excise Duty subsidy as revenue income out of sheer mistake and inadvertence on the part of the assessee. It is the contention of the assessee that such mistake in declaring excessive taxable income will not operate as any kind of estoppel against the assessee regardless of whether any revised return was filed or not and regardless of the fact that whether such new claim was made before the AO in the course of assessment proceedings or not. The assessee contends that once the assessee is in a position to show that it has been over-assessed under the provisions of the Act even on account of assessee's own mistake or otherwise, the Revenue is under statutory obligations to assess correct income. The CIT(A) has shunned the claim of the assessee without examining factual matrix in discord with the sublime principles emanating from plethora of judicial precedents.

8.1 We have no difficulty to accept such contentions. It is trite that the authorities under the Act are under sacrosanct obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or not being properly instructed, is over assessed, the authorities under the Act are required to ensure that only legitimate tax dues are collected. This is the view which flows from innumerable judgments including *CIT vs. Shelly Products (2003) 261 ITR 367 (SC)*, *S. R. Koshti vs. CIT (2005) 276 ITR 165 (Guj)*, *Ester Industries vs. CIT (2009) 185 TAXMAN 266 (Delhi)* and *CIT vs. Pruthvi Brokers & Shareholders (P.) Ltd. [2012] 349 ITR 336 (Bom)*. The

essence of these decisions are that mere admission on the part of the assessee with respect to an addition/disallowance in its original return or in revised return would not *ipso facto* bar an assessee from claiming an expense or disputing an income, if it is otherwise permissible under law. It is thus well settled that if a particular income is not taxable under the Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. The Revenue authorities cannot enforce untenable actions of the assessee against it which led to declaration of income of higher amount incorrectly. It is thus open to assessee to show that it was over assessed under erroneous impression of law or facts even if it is attributable to the mistake of assessee.

8.2 So viewed, we do see potency in the argument laid on behalf of the assessee that the CIT(A) committed error in not making enquiry into legitimacy of relief so claimed and grant him appropriate relief if found in order. In our considered view, the action of the CIT(A) is in defiance of the judicial precedents on the issue and thus cannot be countenanced. In our view, the assessee cannot be prevented from raising such additional claim before the CIT(A) merely because the ROI could not be revised or claim was not put before Assessing Officer.

8.3 The factual matrix towards character of Excise Duty subsidy however has not been verified by AO or by the CIT(A). It would thus be in fitness of things to remit the issue to the file of the AO rather than that of CIT(A) for fresh determination of correctness of claim. The AO shall exclude the Excise Duty subsidy from the ambit of chargeable income in accordance with law on being satisfied with the claim of the assessee that such subsidy is to be regarded as capital in nature in the context of the case. It shall be open to the assessee to adduce all evidences and explanations as may be considered necessary to support exclusion of such Excise Duty subsidy from the ambit of taxation.

9. The issue is accordingly set aside to the file of the AO for proper determination of taxability of Excise Duty subsidy in question in

accordance with law after providing reasonable opportunity to Assessee in this regard.

10. Consequently, Ground No.1.3 of appeal of the assessee is allowed for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 19th April, 2024.

Sd/-
[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: April, 2024
Prabhat