

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

**&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2591/Mum/2023
(A.Y. 2017-18)**

Bloom Seal Containers Pvt. Ltd. 4 th Floor, Ready Money Terrace, Dr. Annie Besant Road, Worli Naka, Worli, Mumbai-400018	Vs.	DCIT, CPC, IT Department, Bengluru
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:		
Appellant	..	Respondent

Appellant by :	Shri Kirit Kamdar
Respondent by :	Shri Himanshu Kumar

Date of Hearing	16.05.2024
Date of Pronouncement	31.05.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-12/National Faceless Appeal Centre [NFAC] [hereinafter referred to as “CIT(A)”] dated 26.05.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

Ground No. 1 : Double disallowance provision for gratuity under section 43B of the Act and 40A(7) of the Act

- 1.1 *On the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeal)-national Faceless Appeal Centre –(NFAC) [The CIT(A)] has erred in upholding the action of the Centralized Processing Centre (CPC) in making further disallowance on account of variance of Rs. 18,98,167/- between the disallowance reported under section 43B of the Act at Rs. 32,52,491/- as per the tax audit report viz a viz Rs. 13,54,324/- as per the return of income on the alleged ground that the claim of the Appellant is after thought and hence the same is not allowable.*
- 1.2 *In doing so, the CPC and CIT(A) failed to appreciate the fact that the provisions for gratuity has already been separately disallowed under section 40A(7) of the Act in the return of income and therefore, making further disallowance under section 43B of the Act on account of such variance has resulted in double disallowance of the same amount in two different sections.*
- 1.3 *In doing so the CIT(A) ignored the certificate issued by the tax auditor duly certifying the correct amount of disallowance instead of the amount erroneously reported in the original tax audit report.*
- 1.4 *The appellant, therefore, prays that the disallowance made of Rs. 18,98,167/- be deleted.*

Ground No. 2 : Short allowance of expenditure claimed under section 43B of the Act.

- 2.1 *On the fact and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the CPC in allowing only Rs. 9,28,200/- being amount of disallowance made in earlier years but allowable in the previous year under section 43B of the act as per tax audit report instead of allowing Rs. 9,89,372/- as claimed in the return of income and thereby allowing short deduction of Rs. 61,172/- on the alleged ground that the claim of the appellant is after thought and hence the same is not allowable.*
- 2.2 *In doing so the CIT(A) ignored the certificate issued by the tax auditor duly certifying the correct amount of allowance*

instead of the amount erroneously reported in the original tax audit report.

2.3 *The appellant, therefore, prays that the correct amount of allowance of Rs. 9,89,372/- be allowed.*

Without prejudice to ground Nos 1 and 2 above,

Ground No. 3 : Non allowance of set off of MAT credit:

3.1 *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the CPC in not allowing set off available tax credit under section 115Jaa of the Act (MAT Credit) against the tax payable on the income assessed under section 143(1) of the Act.*

3.2 *.The appellant, therefore, praywes that tax credit under section 115JAA be allowed to be set off against the tax payable on the assessed income under section 143(1) of the Act.*

Ground No. 4 : Levy of Interest under section 234 of the Act.

4.1 *On the facts and in the circumstances of the case in law, the CIT(A) erred in upholding the action of the CPC in levying interest under section 234C of the act.*

4.2 *the appellant, therefore, prays that interest levied under section 234C of the Act be deleted.*

3 Brief matter of the case are as under:

- i. The assessee had filed return of income on 07.11.2017 declaring income of Rs. 3,94,59,020/-. Tax was paid on deemed income u/s 115JB calculated at Rs. 5,03,34,400/-. The case was processed u/s 143(1) dated 27.12.2018 by the Centralized Processing Centre, Bengaluru [CPC] wherein addition amounting to Rs. 19,95,339/- was made. Even though in response to the communication received from the CPC regarding proposed adjustment, the assessee had submitted his disagreement to the proposed addition.
- ii. Aggrieved with the CPC's order, the assessee filed an appeal before the Ld. CIT(A)/NFAC on 08.03.2019. Vide order dated 26.05.2023, the Ld. CIT(A) dismissed the assessee's appeal.

While deciding the appeal, letter/certificate dated 18.05.2023 of the CA explaining the discrepancies was not considered by the Ld. CIT(A) on the ground that the same is an after thought and the assessee has not got any order u/s 119(2)(b) of the Act for condonation of delay in filing revised statement in form 3CA/3CD.

- iii. Before us, the Ld. AR submitted that the main addition is on account of gratuity of Rs. 19,02,328/- which was shown in two columns of the tax audit report by the tax auditor. Accordingly, disallowance was made u/s 43B and 40A(7) of the Act, resulting in double disallowance. The assessee had already added back the sum of Rs. 19,02,382/- in his computation of income, and therefore the adjustment in the same amount by the CPC, resulted in double disallowance. In this regard clarification/certificate of the tax auditor has also been filed.

On the other hand, Ld. DR has relied on the order of the Ld. CIT(A).

- iv. We have carefully considered the submissions made by the Ld. AR as well as the Ld. DR. We are of the view that the adjustments/additions were made u/s 143(1) despite disagreement filed by the assessee. The explanation/clarification as well as certificate of the CA have not been considered by the Ld. CIT(A) while deciding the appeal. We, therefore, deem it proper to direct the AO to recompute the total income after taking into account submissions of the assessee in respect of all the adjustments

made by the CPC, after giving due opportunity of hearing to the assessee.

4. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order Pronounced in Open Court on 31.05.2024

Sd/-

(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Place: Mumbai

Date 31.05.2024

ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.