

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.1315/MUM/2024
Assessment Year :2020-21

Mahindra Accelo Limited,
6th Floor, Mahindra Towers,
P.K.Kurane Chowk,
Worli, Mumbai -400 018
PAN: AAACM-4745-P

---- Appellant

Vs.

ADDL/JCIT(A)-1, Visakhapatnam,
1st Floor, Prestige Alpha No.48/1 48/2,
Beratengraharu Begur, Hosur Road,
Uttarahalli Hobli,
Bengaluru – 560 100

--- Respondent

Assessee by : Ms.Sneha Goyal
Revenue by : Shri Surendra Meena

Date of Hearing : 12/06/2024
Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 24-01-2024 passed by Ld Addl/JCIT(A), NFAC, Visakhapatnam and it relates to the assessment year 2020-21. The issue contested in this appeal relates to the disallowance of Rs.3,85,96,890/- made u/s 43B of the Act by the CPC while processing the return of income relating to AY 2020-21.

2. We heard the parties and perused the record. The above said amount of Rs.3,85,96,890/- relates to the unpaid leave encashment amount, which is disallowable u/s 43B(f) of the Act. The Ld A.R submitted that the above said amount pertained to the outstanding liability as on 31.3.2019 and hence disallowable in AY 2019-20. According to the assessee, the above said amount was disallowed in terms of sec.43B(f) of the Act while computing total income of AY 2019-20.

3. According to the assessee, the above said amount remained unpaid as on 31.3.2020 also. However, the same is not required to be disallowed again, since it has already been disallowed in AY 2019-20. However, it came to be disallowed again in AY 2020-21 due to an error committed in the Tax audit report. The Ld A.R submitted that the format of "Tax Audit Report" contains specific clauses for reporting these kinds of cases in order to ensure that double disallowance is not being made. In this regard, the Ld A.R invited our attention to the following clauses of Tax audit report:-

First Part:-

26(i) In respect of any sum referred to in clause 9a),(b),(c),(d),(e),(f) or (g) of section 43B, the liability for which:-

26(i)A - pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was:-

26(i)(A)(a) - Paid during the year --
xxxx

26(i)(A)(b) - Not paid during the year --
xxxx

Second Part:-

26(i)B - was incurred in the previous year and was

26(i)(B)(a) - Paid on or before the due date for furnishing the return of income of the previous year under section 139(1) -
xxxxxx

26(i)(B)(b) - not paid on or before the aforesaid date
xxxxxx

4. Since the leave encashment amount of Rs.3,85,96,890/- outstanding on 31.3.2019 continued to be outstanding on 31.3.2020, the same should have been reported in clause 26(i)(A)(b) of the Tax Audit Report. However, the Tax Auditor has reported the same in Clause 26(i)(B)(b) of the Tax audit report issued on 28-12-2020. Realising the mistake, the Tax Auditor has

issued another Tax Audit report immediately on the next date, i.e., on 29-12-2020 reporting the above said amount in Clause 26(i)(A)(b).

5. According to Ld A.R, the CPC did not take cognizance of the revised tax audit report furnished by the assessee and the above said amount of Rs.3,85,96,890/- was disallowed again while processing the return of income u/s 143(1) of the Act relating to AY 2020-21 by placing reliance on the first tax audit report. This has led to double disallowance of very same amount, once in AY 2019-20 and again in AY 2020-21.

6. According to Ld A.R, the assessee filed a rectification petition u/s 154 of the Act, but the same has not been disposed of yet. The assessee also filed an appeal before the Id CIT(A), but the first appellate authority has dismissed the appeal of the assessee holding that the outstanding leave encashment is required to be disallowed u/s 43B of the Act.

7. From the discussions made supra, we notice that the confusion has arisen on account of an error committed in the Tax Audit report. Obviously, the CPC has made the impugned disallowance of Rs.3,85,96,890/- on the basis of original tax audit report, wherein the above said amount was erroneously report in an inappropriate clause. The provisions of sec.43B shall apply in AY 2020-21 only in respect of those expenses which are otherwise allowable as deduction in AY 2020-21. The above said amount of Rs.3.85 crores relate to the outstanding leave encashment as on 31.3.2019 and it relates to Asst. Year 2019-20. The above said amount has to be disallowed only in AY 2019-20 and not in any other year. According to Ld A.R, it was disallowed in Assessment year 2019-20 and in that case, the very same amount cannot be disallowed in AY 2020-21, even if it remained unpaid as on 31.3.2020. Hence the "First part" (supra) of the Tax audit report contained specific clauses for reporting this kind of cases in order to ensure that double disallowance of same item is not made.

8. There should not be any dispute that the assessing officer is required to compute the total income in accordance with the provisions of Income tax Act and he cannot take advantage of the mistake, if any, committed by the assessee or tax auditor. In this view of the matter, the CPC/AO was not justified in ignoring the revised tax audit report furnished by the assessee correcting the mistake committed in the original tax audit report. Accordingly, in principle the impugned disallowance is liable to be deleted in AY 2020-21.

9. However, we are of the view that the factual aspects discussed above require examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the factual aspects presented by the assessee before the Tribunal, which were discussed in the preceding paragraphs. If they are found to be correct, then the addition of RS.3.85 crores made in AY 2020-21 will result in double disallowance and the same should be deleted. Accordingly, the AO may take appropriate decision after verifying the relevant details and after affording adequate opportunity of being heard to the assessee.

10. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 18th June, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)

JUDICIAL MEMBER

Mumbai, Date : 18th June, 2024

Vm

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, " F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai