

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.249/Kol/2024
Assessment Years: 2017-18

North India LPG Cylinders Ltd.....Appellant
12 Government Place,
East Esplanade,
Kolkata – 700069.
[PAN: AADCN8006B]

vs.

ITO, Ward-3(1), Kolkata..... Respondent

Appearances by:

Shri Ashish Rastogi, AR, appeared on behalf of the assessee.

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : April 22, 2024

Date of pronouncing the order : June 21, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 06.12.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the order of the Ld. Commissioner of Income Tax (Appeals)-11, Delhi.

2. That on the facts and in the circumstances of the case, the appellant company did not get the notice served for hearing from the office of the Ld. Commissioner Of income Tax (Appeals)- 11, Delhi.

3. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-11, Delhi, had erred in making disallowances on account of delayed payment of provident Fund and Employees State Insurance of Rs. 14,54,713/.

4. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income tax (Appeals) -11, Delhi, had erred in making disallowance on account of provision for gratuity amounting to Rs. 14,71,745/ without considering that the assessee had suo moto disallowed the same.

5. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income tax (Appeals) -11, Delhi, had erred in disallowing the credit of payment of advance tax of Rs.20,00,000/ to the appellant company.

6. That the appellant craves leave to supplement, cancel or otherwise amend any of the grounds herein above before or at the time of the hearing of the appeal.”

3. **Ground No.1** is general in nature.

4. **Ground No.2** is not pressed.

5. **Ground No.3** – Vide Ground No.3, the assessee agitated the disallowance made by the lower authorities on account of delayed payment of Provident Fund and Employees State Insurance.

5.1 At the outset, the ld. counsel for the assessee has submitted that the deposits towards Provident Fund ('PF') and Employees State Insurance ('ESI') were totalling to Rs.14,54,713/-, out of which a sum of Rs.535994/- was towards employees' contribution and a sum of Rs.9,18,725/- was towards employer's contribution. The Assessing Officer treated the entire amount as employees' contribution towards Provident Fund and Employees State Insurance. He disallowed the entire amount u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on account of delayed deposit of employees' contribution to PF/ESI i.e. after the due date as provided under the respective welfare enactments. The ld. Counsel, in this respect, has submitted that the employer's contribution was duly deposited well within the due date of filing of Income Tax Return and the same was allowable as deduction u/s 43B

of the Act. He, therefore, has pleaded that the disallowance towards employer's contribution was not warranted.

5.2 Considering the above submissions, the Assessing Officer is directed to verify the contention of the assessee and if the employer's contribution has been deposited before the due date of filing of return of income as per the provisions of section 43B read with section 36 of the Act, the Assessing Officer will allow the same accordingly.

5.3 However, so far as the delayed deposit of employees' contribution to PF/ESI is concerned, the ld. Counsel has not pressed the issue in view of the decision of the Hon'ble Supreme Court in 'Checkmate Services Pvt. Ltd. Vs. CIT' reported in (2022) 143 taxmann.com 178 (SC) dated 12.10.2022, wherein, it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed even though deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.

6. **Ground No.4** – Vide Ground No.4, the assessee has agitated against the disallowance on account of provisions for gratuity amounting to Rs.14,71,745/-.

6.1 The ld. Counsel, in this respect, has submitted that the Assessing Officer has made double disallowance in respect of the said amount. That the assessee had already suo moto disallowed the said amount in the computation of total income, which has escaped attention of the Assessing Officer.

6.2 In view of the above, the issue is accordingly restored to the file of the Assessing Officer with a direction to verify the aforesaid contention of the assessee and if the assessee has already suo moto

disallowed the said provision for gratuity, no further disallowance will be attracted.

7. **Ground No.5** – Vide Ground No.5, the assessee has agitated against the disallowance on account of credit of payment of advance tax of Rs.20,00,000/-.

7.1 The brief facts relevant to the issue are that there has been a demerger of the unit of M/s North India Wires Limited and owing to this Demerger ,the Howrah Unit of North India Wires Limited had been demerged and transferred to the resulting company i.e. M/s North India LPG Cylinders Limited (the assessee herein). The appointed date for the demerger was 01.04.2015, however, the financial effect of the merger had been taken in the financial year 2016-17. The assessee company had made payment of advance tax of Rs.20,00,000/- on 15.03.2017 vide PAN: AABCN0120A of merged entity i.e. M/s North India Wires Limited. Owing to the unit getting transferred, all the assets, liabilities, income and expenses got transferred to the assessee company. Accordingly, the assessee company has taken into account in its return of income, the income of the demerged company also, however, the credit of the advance paid on behalf of the demerged company has not been given to the assessee company.

7.2 We find force in the contention of the ld. Counsel for the assessee. Since, the demerger has taken effect from 01.04.2015 and the assessee company has taken into account the income of the merged company, therefore, the assessee company will also be entitled to the credit of the deposit of advance tax made on behalf of the merged company. The Assessing Officer is directed to verify the aforesaid facts and given due credit of the advance tax paid on behalf of the merged company to the assessee company.

8. Subject to the above observations, the appeal of the assessee is treated as partly allowed.

Kolkata, the 21st June, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 21.06.2024.

RS

Copy of the order forwarded to:

1. North India LPG Cylinders Ltd
2. ITO, Ward-3(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches