

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 72/PAT/2013
Assessment Year: 2007-2008**

***Goodhost Liquors Pvt. Ltd.,..... Appellant
Binoshiba House, Fraser Road,
Patna-800001
[PAN: AABCG3072A]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-3, Patna***

Appearances by:

N o n e, appeared on behalf of the assessee

*Smt. Rinku Singh, CIT, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : May 07, 2024

Date of pronouncing the order : July 01, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals)-1, Patna dated 7th December, 2012 passed for A.Y. 2007-08.

2. It is pertinent to note that this appeal was listed for hearing on 22.11.2016, but no one appeared on behalf of the assessee and it was dismissed for want of prosecution vide order dated 22.11.2016.

3. The assessee thereafter filed a Miscellaneous Application bearing No. 1/PAT/2017 and contended that Shri Sanjay Kumar, Director of the assessee-company was in Kolkata and could not give instruction to his staff to take adjournment from the Tribunal. This application of the assessee was allowed by the ITAT vide its order dated 11th January, 2023. The appeal was restored to its original number.

4. In response to the notice of hearing, no one has come present on behalf of the assessee. In the past on 18th April, 2023, Shri Nitish Prasad Sinha, Advocate appeared but sought adjournment. Thereafter no one has appeared. Since it is a very old appeal, therefore, we heard it *ex-parte*.

5. It emerges out from the record that the assessee has taken fourteen grounds of appeal, which are not in consonance of Rule 8 of Income Tax Appellate Tribunal Rules. The grounds are descriptive in nature. In brief, the substantial solitary issue involved in this appeal is whether a penalty imposed for violation of Excise Tax and

Sales Tax Act (VAT) amounting to Rs.23,10,451/- is allowable as a deduction to the assessee or not.

6. The assessee at the relevant time was engaged in the business of manufacturing of Indian made foreign liquor. It has filed its return of income on 01.01.2008 declaring total income at 'NIL'. The case of the assessee was selected for scrutiny assessment and notices under section 142(1) and 143(2) were issued and served upon the assessee. An assessment order was passed under section 143(3) on 30.12.2009 and thereafter it was reopened. It appears that revisionary powers were exercised by the Id. Commissioner and this assessment order was set aside in pursuance of the Id. Commissioner's order, Id. Assessing Officer has passed the fresh order on 24.01.2012 under section 143(3)/263. It emerges out from the record that license of the assessee to manufacture Indian made foreign liquor was cancelled by the Excise Authorities. The assessee challenged that order by way of a Writ Petition before the Hon'ble High Court and ultimately it was held that such licence be restored on payment the revenue loss along with penalty by the assessee. The Id. Assessing Officer has held that penalty paid by the assessee for violation of excise and VAT is not allowable as a deduction to the assessee as per Explanation 1 attached to Section 37 of the Income Tax Act. Accordingly, Id. Assessing Officer has made an addition of Rs.23,10,451/-.

7. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

8. With the assistance of ld. D.R., we have gone through the record carefully. A perusal of the grounds of appeal revealed that major contention raised by the assessee is that such payment of Rs.23,10,451/- was made for restoration of its licence, which is a necessary business expenditure and thus allowable. However, we do not find force in the contention of the assessee. It is pertinent to observe that jurisprudence on this issue contemplates that where the entire business of the assessee is illegal and the income is sought to be taxed by the ITO, then the expenditure incurred in the illegal activities will also have to be made as a deduction but if business is otherwise lawful and the assessee resorts to unlawful mean to augment its profit or reduce loss, then the expenditure incurred for this unlawful activities cannot be allowed as a deduction. Even if the assessee has to pay the fine or penalty because of an inadvertent infraction of law, which does not invoke any moral obligatory, the result will be the same. The Explanation to Section 37 prohibits allowance of any deduction of alleged expenditure, which was incurred towards activities prohibited by law. If this amount is being allowed to the assessee as a deduction, what is the use of imposing penalty under the Excise/VAT

Law because from one hand, the assessee made the payment for violation of Excise provision and on the other hand, it has claimed deduction under the Income Tax Act as an allowable business expenditure. Therefore, we are of the view that Id. CIT(Appeals) has rightly confirmed the disallowance. After going through the order of the Id. CIT(Appeals), we do not find any error in it. Accordingly the appeal of the assessee is dismissed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 01.07.2024.

Sd/-	Sd/-
(Manish Borad)	(Rajpal Yadav)
Accountant Member	Vice-President
Kolkata, the 1st day of July, 2024	

Copies to :(1) *Goodhost Liquors Pvt. Ltd.,
Binoshiba House, Fraser Road,
Patna-800001*
(2) *Deputy Commissioner of Income Tax,
Central Circle-3, Patna*
(3) *Commissioner of Income Tax (Appeals)-1,
Patna;*
(4) *CIT-*
(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.