

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2794/Mum/2024**  
**Assessment Year: 2017-18**

**&**

**I.T.A. No. 2848/Mum/2024**  
**Assessment Year: 2020-21**

<b>The Clearing Corporation of India Limited, Mumbai</b> CCIL Bhavan, S.K. Bole Road Dadar West Mumbai - 400028 <b>[PAN: AABCT4143P]</b>	Vs	<b>Assistant Commissioner of Income Tax, Circle - 8(3)(1), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Ronak Doshi, A/R
Revenue by :	Ms. Madhu Malati Ghosh, CIT, D/R & Shri Akshay Tapadiya, Sr. D/R.

सुनवाई की तारीख/Date of Hearing : 22/07/2024  
घोषणा की तारीख /Date of Pronouncement: 25/07/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 2794/Mum/2024 & I.T.A. No. 2848/Mum/2024 are two separate appeals by the assessee preferred against the order of the NFAC, Delhi, dt. 27/03/2024, pertaining to AYs 2017-18 and 2020-21.

2. Since common grievance is involved in both the appeals, they were heard together and are disposed off by way of this common order for the sake of convenience and brevity.

3. The common grievance relates to the disallowance of provision for variable pay to the employees, though the quantum may differ in the captioned appeals.

4. Representatives of both the sides were heard at length, case records carefully perused and relevant documentary evidence brought on record considered in the light of Rule 18(6) of the ITAT Rules, 1963.

5. Since the underlying facts in the issues are identical, we consider the facts for AY 2017-18.

6. During the course of scrutiny assessment proceedings, the AO found that the assessee has booked a provision for variable pay and claimed it as a deduction u/s 37 of the Act. The details were found as under:-

Variable pay details	PROFIT AND LOSS FY 2016-17	Paid in June 16(Paid during the Previous Year)	Paid in June 17)before filing of Income tax return)	Paid in June 18
Variable pay 15-16	6,20,08,970	3,10,04,485	3,10,04,485	-
Variable Pay FY 16-17	7,89,04,058	-	3,94,52,029	3,94,52,029
	14,09,13,028	3,10,04,485	7,04,56,514	3,94,52,029

7. The assessee was asked to justify its claim and in its submissions, the assessee explained that till FY 2015-16, the assessee was accounting for variable pay in the year of ascertainment. However, from the year under consideration, the assessee started accounting for variable pay on provision basis. Accordingly, variable pay expense for FY 2016-17 which includes variable pay for AY 2015-16 ascertained in FY 2016-17 and includes provision for variable pay in FY 2016-17. The assessee further explained the admissibility u/s 37 of the Act. It was strongly contended that the company has been following the same method of accounting for variable pay expenses but in the year under consideration, the company has improvised the accounting provision to arrive at true and fair financial results.

8. The contentions of the assessee were dismissed by the AO who was of the firm belief that the assessee has not submitted any actuarial valuation for quantification of this amount which could establish its character as an ascertained liability. The AO was of the opinion that the provision is a remedy which has not been substantiated and the liability has not been incurred as the employees may choose to leave the organization. The AO disallowed the impugned amounts in both the AYs.

8.1. Assessee carried the matter before the Id. CIT(A) but without success.

9. Before us, the Id. Counsel for the assessee reiterated what has been stated during the course of assessment proceedings. Per contra, the Id. D/R strongly supported the findings of the AO.

10. We have given a thoughtful consideration to the orders of the authorities below. The contention that the assessee has been following the same method of accounting for variable pay but has improvised the accounting provision to arrive at true and fair financial results suggests that in all the earlier accounting years, the financial statements of the assessee were not giving true and fair view of the statement of affairs of the assessee company. The assessee in its own admission has stated that, in earlier accounting years, it was following faulty accounting policies which went unnoticed by the revenue authorities.

10.1. Be that as it may, it appears that the policy relating to the variable pay structure has not been examined thoroughly by the AO or by Id. CIT(A). In fact, by an application dt. 22/07/2024 under Rule 29 of the ITAT Rules, the assessee has sought permission for the admission of additional evidence in the form of variable pay policy.

11. We are of the considered opinion that the variable pay policy filed before us goes to the root of the matter and needs thorough examination inasmuch as payment partly related to earlier financial years has also come in the year under consideration which may, have the color of prior period expenses. Considering the facts in totality in the light of the variable pay policy, we deem it fit to restore both the appeals to the files

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of the AO. The AO is directed to examine the variable pay policy thoroughly and decide the issue afresh as per the relevant provisions of law and after affording reasonable and adequate opportunity of being heard to the assessee.

12. In the result, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the Court on 25<sup>th</sup> July, 2024 at Mumbai.**

**Sd/-**

**(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-**

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 25/07/2024

*SR*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai