

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NO. 1838/Del/2024		
A.YR. : 2019-20		
DCIT, CIRCLE 4(2), ROOM NO. 384, 3 RD FLOOR, C.R. BUILDING, NEW DELHI – 2 (PAN:- AAHCB1218P)	VS.	BOEING INDIA PRIVATE LIMITED, 3 RD FLOOR, DLF CENTRE, SANSAD MARG, NEW DELHI – 1
(APPELLANT)		(RESPONDENT)

Appellant by : Sh. Kshitij Bansal, CA
Respondent by : Sh. Rajesh Kumar Dhanesta, Sr. DR.
Date of hearing : 25.11.2024
Date of pronouncement : 28.11.2024

ORDER

PER SHAMIM YAHYA, AM :

The Revenue has filed the instant appeal against the order dated 20.02.2024 of the Ld. Addl/JCIT(A)-12, New Delhi relating to assessment year 2019-20 on the following ground:-

“Whether the ld. CIT(A) has erred in deleting addition on disallowance of gratuity u/s. 40A(7) amounting to Rs. 1,99,47,067/- made by CPC u/s.

143(1) stating that the assessee has not included the said amount in P&L account whereas it is seen that the same is not borne out of the facts of the case mentioned in the order by CIT(A) and neither it is verifiable from the ITR of the assessee?”

2. Briefly stated facts are that the assessee is a private limited company incorporated on 9.3.2017 under the provisions of Companies Act, 2013. During financial year 2018-19, the assessee was engaged in various services to its Associated Enterprises (AEs) on cost plus basis. The assessee filed its return of income for AY 2019-20 on 29.11.2019 declaring a total income of Rs. 1,93,14,47,100/- and claiming a tax refund of Rs. 1,97,380/-. A communication dated 10.1.2020 was received by the assessee from the CPC, Bangalore proposing an adjustment under section 143(i)(a)(iv) of the Act to disallow the following:

- i) Employees contribution to Provident Fund (PF) amounting to Rs.1,86,20,241/- under section 36(1)(va) of the Act, deposited after the due date prescribed under the PF Act but before the due date of filing the ROI under section 139(1) of the Act; and
- ii) Provision for payment of Gratuity amounting to Rs. 1,99,47,067/- under section 40A(7) of the Act;

3. Against the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who vide his order dated 20.02.2024 has partly allowed the appeal of the assessee by deleting the addition of Rs. 1,99,47,667/- on account of provision for payment of Gratuity. The relevant finding of the Ld. CIT(A) are reproduced as under:-

“.....5.1 It is apparent from the above that the appellant himself has not included the above item in the P & L account and thus the PBT reported under tax return form excludes the impact of actuarial gain and loss of the gratuity. Thus, the appellant has duly disallowed the provision of gratuity as per provisions of section 40A(7). The contention of the appellant was found to be correct and the addition made by the AO CPC deserves to be deleted.”

4. Aggrieved with the aforesaid Ld. CIT(A)'s finding, Revenue is in appeal before us.

5. We have heard both the parties and perused the relevant records.

6. At the time of hearing, Ld. DR relied upon the order passed by the AO and reiterated the ground of appeal raised by the Revenue.

6.1 Per contra, Ld. AR for the assessee submitted that Ld. CIT(A) deleted the disallowance of Rs. 1.99 crores in question after perusing all the relevant documents, viz., financial statements and ITR of assessee alongwith its

submissions, hence, he requested to uphold the action of the Ld. CIT(A) and accordingly, the appeal of the Revenue may be dismissed.

7. Upon careful consideration, we find that before the Ld. CIT(A), assessee has contended that the AO CPC has erred in making adjustment amounting to Rs. 1,99,47,667/- ignoring the online response filed by the assessee and ignoring the fact that it was never debited to P&L account in the ITR. The assessee further stated that the disallowance made u/s. 40A(7) of the Act is on account of difference of provision of gratuity reported in the TAR and that it has been disallowed by the appellant while filing its return of income. Further, the assessee has stated that the difference arose due to presentation of provision of gratuity in the financial statement due I GAAP to Ind AS. Further, the assessee stated that the provision of gratuity actually debited in the P&L account has been disallowed in the Income Tax Return by the assessee and the income tax return was carefully examined by the Ld. CIT(A) and he found that the treatment for provision of gratuity was made in the following manner:-

60	<i>Balance carried to balance sheet (58 – 59vi)</i>		60	98892096
61	<i>A</i>	<i>Items that will not be reclassified to P&L</i>	61	
	<i>i</i>	<i>Changes in revaluation surplus</i>	<i>i</i>	0
	<i>ii</i>	<i>Re-measurements of the defined benefit plans</i>	<i>ii</i>	-19947067
	<i>iii</i>	<i>Equity instruments through OCT</i>	<i>iii</i>	0
	<i>iv</i>	<i>Fair value changes relating to own credit risk of financial liabilities designated at FVTPL</i>	<i>iv</i>	0
	<i>v</i>	<i>Share of other comprehensive income in associates and joint ventures, to the extent not to be classified to P&L</i>	<i>v</i>	0

7.1 We further note that Ld. CIT(A) has rightly noted that the assessee himself has not included the above item in the P & L account and thus the PBT reported under tax return form excludes the impact of actuarial gain and loss of the gratuity, which shows the assessee has duly disallowed the provision of gratuity as per provisions of section 40A(7), hence, the contention of the assessee was rightly found to be correct and the addition made by the AO CPC was rightly deleted by the Ld. CIT(A), which in our considered view, does not need any interference on our part, hence, we affirm the action of the ld. CIT(A) and accordingly the ground raised by the Revenue is rejected.

8. In the result, appeal by the Revenue is dismissed.

Order pronounced on 28/11/2024.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRBHATNAGAR

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar