

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.3659/Mum/2024
Assessment Year : 2022-23

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| ACIT-2(2)(1), 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai. | vs. | Learningmate Solutions Private Limited, Level 7 to 10, 74 Techno Park, 74/Ii, C Cross Road, MIDC, Marol Industrial Area, Andheri (East) Mumbai PAN : AAACL9067F |
| (Appellant) | | (Respondent) |

Assessee by : Shri Dhanesh Bafna &
Shri Hardik Nirmal &
Ms. Tejal Saraf

Revenue by : Dr. K.R. Subhash, CIT-DR

Date of Hearing : 13-11-2024

Date of Pronouncement : 17-12-2024

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt.28-05-2024 passed by the Ld.Addl./JCIT(A)-Raipur and it relates to AY. 2022-23. The issue urged in this appeal is with regard to the relief granted by the First Appellate Authority (FAA) in respect of addition relating to GST refund made by the CPC while processing the return of income.

2. The assessee is engaged in the business of providing e-learning facilities, specialising in content creation, development, conversion of text data into e-learning courses and creation of educational technology. The assessee-company is wholly owned by SPi Global Content Holding Private Limited. The assessee filed its return of income for the year under consideration, declaring a total income of Rs. 23.91 crores. The same was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act'), wherein the CPC made an adjustment of Rs. 12.73 crores on the basis of information given in the Tax Audit Report. It is pertinent to note that the tax auditor had reported the refund of Goods and Services Tax of Rs. 12.73 crores, as an item of 'refund of tax admitted as due by the authorities concerned' and which was not credited to the Profit & Loss Account. Accordingly, while processing the return of income filed by the assessee, the CPC made adjustment of the above said amount as per section 143(1)(a)(iv) of the Act.

3. The assessee challenged the above said adjustment by filing the appeal before the Ld.CIT(A), contending that the GST refund is not in the nature of income covered u/s. 28 and further, it is a capital receipt not chargeable under the Income Tax Act. The assessee also challenged the validity of adjustment made by the CPC. The Ld.Addl./JCIT(A) upheld the validity of adjustment made by the CPC. However, on merits, the Ld.Addl./JCIT(A) held that the GST refund is not a revenue receipt and hence not liable to tax u/s.28 to 44DB of the Act. Aggrieved by the order of the Ld.Addl./JCIT(A), the Revenue has filed this appeal before the Tribunal.

4. We heard the parties and perused the record. We notice that the Ld.Addl./JCIT(A) has given the following reasoning to hold that the GST refund is in the nature of capital receipt.

“5.1 I have considered the facts of the case, intimation u/s. 143(1) of the Act and appellant’s written submissions. The CPC, while processing the assessee’s return of income filed for the AY 2022-23, the certain adjustment made on account of inconsistency in the amount pertaining to any other item or items of addition under section 28 to 44DB of the Act while computing the tax liability under processing return of income u/s 143(1) of the Act. **There are many refunding conditions laid by the Government in respect of GST. The amount of GST refund refers to the excess tax that was paid by the assessee and therefore is not considered as an income. Therefore, it is not taxable.** Nevertheless, the interest acquired over the income tax refund is considered as an income and is subjected to income tax as per the applicable tax slab.

When the assessee owe taxes, it has liabilities on its balance sheet until the assessee remit the taxes. If the government issues a refund to the assessee, the refund is an asset (alias a receivable). As per normal practice, the assessee enter GST collected on Sales on the debits side and credited to the GST Liabilities Payable account. Further, the assessee enter the GST on Purchases on the credit side and debited to the ATO Clearing account and subsequently, enter the refund amount on the debits side. The refund liability represents the amount of consideration that the reporting entity does not expect to be entitled to because it will be refunded to customers. A refund is a special type of expense transaction because it reduces your business expenses (as though the original purchase was for a lesser amount). It should not be recorded as revenue. If you need to refund a customer for a purchase they made from your business, you will need to create a purchase return journal entry. This will help the assessee track the returned merchandise and ensure that the vendor or supplier provides you with a credit for the returned items.

It is well-settled law that receipt of a capital nature or the refund of the deposit or investment by a person is not in the nature of income and as such not to be included in the total income. All receipts of payments do not necessarily bear the income character. Relying upon the decision of Hon'ble Supreme Court in the case of National Cement Mines Industries Ltd. v. CIT [1961] 42 ITR 69 wherein it has been laid down that unless the receipt falls within the definition of income under section 2(24), it does not change the character. It was submitted by the assessee that refund from GST would continue to be of the same character i.e., capital unless the same is specifically brought within the definition of income under section 2(24).

It was also the case of the assessee that distinction between capital receipt and revenue receipt though fine, is real. There are certain broad principles which guide to determine the character of receipt as laid down by Apex Court in the case of National Cement Mines Industries Ltd. (supra). The assessee's case is that wherever Legislature intended to tax capital and non-revenue receipts, the specific provisions have been made by bringing such capital and non-revenue receipts within

the definition of income under section 2(24) of the Act. The plea of the assessee is that non-action on the part of Legislature to bring corresponding provision to include such refund from GST account in the definition of income under section 2(24) of the Act will be fatal and such refund cannot be treated as income. Considering the above facts and circumstances of the case, it is held that the amount of GST refund of Rs. 12,72,90,121/- is not a revenue receipt and not liable to addition under section 28 to 44DB of the Act.

Hence, the ground raised by the appellant regarding this issue is treated as allowed.”

5. On going through the above said reason, we notice that the Ld.Addl./JCIT(A) has discussed about the accounting principles and the situation in which the GST refund would arise. We notice that the Ld.Addl./JCIT(A) did not examine the factual aspects relating to the case under consideration. We notice that the assessee has not stated anywhere as to how refund of GST tax arose to it.

6. The Ld A.R submitted that the GST was not routed through the Profit and Loss account by the assessee. He submitted that the assessee has not claimed GST payment as an expenditure and in that case, the refund of GST amount will not be taxable. He further submitted that the tax auditor report did not bring out exact nature of the GST refund and hence the adjustment made by CPC is not correct.

7. In our view, the CPC has made the adjustment u/s 143(1) as per the mandate given in that section on the basis of information given in the tax audit report. But the case of the assessee is that the said GST refund is not taxable under the Act and the tax audit report did not correct depict the legal position. If an item of receipt is not taxable, then the revenue cannot levy tax thereon. However, in our view, the taxability or otherwise of the GST refund can be decided only if the facts relating thereto and the accounting entries passed by the assessee are examined. In the instant case, the CPC had made the adjustment and hence the AO did not have an occasion to examine this issue. We

noticed that the Ld CIT(A) also did not examine factual aspects surrounding the issue.

8. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by the Ld.Addl./JCIT(A) and restore this issue to the file of the AO for examining the same afresh. After providing adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

9. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 17-12-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 17-12-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

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