

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3173/MUM/2024
(Assessment Year: 2022-23)**

Pfizer Limited

The Capital, 1802/1901, Plot No.C-70, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai- 400 051, Maharashtra
[PAN:AAACP3334M]

..... **Appellant**

Vs

**The Deputy Director of Income Tax,
Central Processing Centre, Bengaluru**
Karnataka.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Paras Savla
Shri Pratik Poddar & Shri Shreyas
Sardesai
For the Respondent/Department : Ms. Madhu Malti Ghosh &
Shri Akshay Tapdiya

Date

Conclusion of hearing : 22.11.2024
Pronouncement of order : 31.12.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present the Assessee has challenged the order, dated 15/04/2024, passed by the Additional / Joint Commissioner of Income Tax (A)-1, Vadodara , [hereinafter referred to as the '**CIT(A)**'] whereby the Ld. CIT(A) had partly allowed the appeal preferred by the Assessee against the Intimation Order, dated 29/07/2022, issued under Section 143(1) of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'] for the Assessment Year 2022-2023.
2. The Appellant has raised following grounds of appeal:
 - (a) Ground No.1 (1.1 to 1.4) and Ground No.5 pertain to rejection of claim of deduction of INR.5,31,52,923/- Section 43B of the

Act in respect of indirect taxes paid by the Assessee

- (b) Ground No.2 (2.1 to 2.4) pertains to addition of INR.9,57,84,365/- on account of re-measurement of defined benefit plan
 - (c) Ground No.3 pertains failure of CIT(A) to adjudication the ground raised by the Assessee in relation to incorrect calculation of tax payable
 - (d) Ground No.4 pertains to non-grant of personal hearing through video conferencing
 - (e) Ground No.6 relates to incorrect levy of interest under Section 234 B of the Act
3. Heard both the sides and perused the material on record.
4. The relevant facts, as emerging from the record, are that return filed by the Assessee for Assessment Year 2022-2023 was picked up for processing by the Central Processing Centre (CPC) and notice, dated 14/12/2022, was issued to the Assessee requiring submission of response to the following issues:
- (a) inconsistency in any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date [36(1)(va)] claimed in return in schedule OI and audit report.
 - (b) inconsistency in amount mentioned in return at Sl. No. 5(d) of Part A - OI "Any other item of income" and Tax Audit Report
 - (c) inconsistency in amount mentioned at Sl. No. 3(a) of Part A-OI "Increase in the profit or decrease in the loss because of deviation, if any, as per Income Computation Disclosure Standards notified under Section 145(2) in return as compared to amount mentioned in clause 13(e) of the audit report.

5. The Assessee submitted response to the above notice vide reply letter dated 04/01/2023 [*copy placed at page 216-217 of the Paper-Book*].
6. Subsequently an Intimation Order, dated 29/07/2023, was issued under Section 143(1) of the Act whereby the following additions/disallowances were made to the returned income of the Assessee on account of:
 - (a) rejection of claim of deduction of INR.5,31,52,923/- in terms of Section 43B of the Act in respect of indirect taxes paid
 - (b) addition of INR.9,57,84,365/- on account of re-measurement of defined benefit plan
7. Being aggrieved, the Assessee went in appeal before the CIT(A) against the above said Intimation Order, dated 29/07/2023, issued under Section 143(1) of the Act. The CIT(A) disposed off the said appeal as partly allowed vide order dated 15/04/2024. The CIT(A) declined to grant any relief in relation to the above addition/disallowance on the ground that the Assessee had failed to avail the opportunity to furnish supporting documents.
8. The Assessee is now in appeal before the Tribunal challenging the order of the CIT(A).
9. We have given thoughtful consideration to the rival submissions.

Ground No. 1 (1.1. to 1.4) & 5

10. On perusal of documents placed before us as part of the paper-book furnished by the Assessee, we find that the Assessee had filed submissions before the CIT(A). We note that in the return of income for AY 2022-2023, the Assessee had claimed a deduction amounting to INR.5,31,52,923/- under Section 43B of the Act as '*any amount*

disallowed under Section 43B in any preceding previous year but allowable during the previous year'. The aforesaid amount represented Central Sales Tax ('CST'), Entry Tax ('ET') and Value Added Tax (VAT) claimed as deduction on payment basis [hereinafter collectively referred to as '**Taxes**']. In the preceding previous years the Assessee had created provision for Taxes but the same were disallowed in terms of Section 43B of the Act. Since the Assessee was disputing the liability to pay Taxes, the payments made towards Taxes were made under protest and recognized as 'asset'. Subsequently, the Assessee settled the disputes under Amnesty Scheme of respective State Governments by making settlement payments. During the relevant previous year, the Assessee recognized the liability to pay Taxes and appropriated the payments made (a) under protest, or (b) as pre-deposit or (c) on settlement under amnesty scheme as the payment towards Taxes. Accordingly, the Assessee claimed deduction for the same under Section 43B of the Act. The aforesaid deduction claimed by the Assessee was denied by CPC while processing the return of income.

11. During the course of hearing it was contended on behalf of the Assessee that the Tax Auditor had certified that aforesaid claim of the Assessee by placing reliance on Clause 26(1)(A)(a) of the Tax Audit Report [at page 23 of the Paper Book]. The Assessee was directed to file statement giving break-up of the amount claimed. Accordingly, the Assessee provided the following details:

Particulars	Amount (INR)
Litigations settled under the West Bengal Sales Tax (Settlement of Disputes) Act, 1999.	4,07,35,209
Litigations settled under the Kerala State - Amnesty scheme - for settlement of arrears.	1,24,17,714
Total	5,31,52,923

Details of CST, VAT and ET litigations settled under the West Bengal Sales Tax (Settlement of Disputes) Act, 1999 along with corresponding Challan GRN Nos. [as furnished by the Assessee] are as under:

Sr. No.	Financial Year	Legislation	Amount paid	Challan GRN No.
1.	2005-06	CST	2,29,658	19-202021-004822922-8
2.	2006-07	CST	84,932	19-202021-004828171-8 & 19-201415-000698347-1
3.	2006-07	VAT	25,000	19-201415-000698347-1
4.	2007-08	CST	1,88,482	19-201718-020363489-1
5.	2007-08	VAT	1,02,212	19-201415-000698413-1 & 19-201718-020413597-1
6.	2008-09	CST	3,76,622	19-201415-000698461-1 & 19-201718- 020413940-1
7.	2008-09	VAT	21,13,081	19-201718-020364514-1 & 19-201415-000698461-1
8.	2009-10	CST	1,67,647	19-201718-020364855-1 & 19-201415-000698508-1
9.	2009-10	VAT	53,86,359	19-201718-020365271-1 & 19-201415-000698508-1
10.	2012-13	CST	67,000	19-201617-000108401-1
11.	201-13	ET	14,78,344	19-202021-004828861-8
12.	2013-14	CST	8,25,197	19-202021-004829471-8 & 19-201718-005037059-1
13.	2013-14	ET	99,03,154	19-202021-004830019-8
14.	2014-15	CST	2,38,498	19-202021-004831307-8 & 19-201718-005037708-1
15.	2015-16	ET	1,95,04,639	19-202021-004831769-8
16.	2012-13	VAT	38,93,445	19-202021-004832415-8
Total			4,45,84,269	

Details of CST and VAT litigations settled under the Kerala State Amnesty scheme for settlement of arrears along with corresponding challan GRN nos. [as furnished by the Assessee] are as under:

Sr. No.	Financial Year	Legislation	Amount paid	Challan GRN No.
1.	2011-12	VAT/CST	7,45,142	KL018869795202122E & DD No. 459033
2.	2012-13	CST	5,41,301	KL019296300202122E & DD No.850425
3.	2012-13	VAT	8,95,353	KL019296300202122E
4.	2013-14	VAT	13,25,024	KL019297565202122E, DD No.751739
5.	2014-15	VAT/CST	26,37,258	DD No.459032
6.	2011-12	CST	81,318	KL019294926202122E & DD Mo.458980
7.	2011-12	VAT	3,71,414	KL019294926202122E
8.	2012-13	VAT	22,15,978	KL019432472202122E
9.	2013-14	VAT	18,50,986	KL019432472202122E
10.	2014-15	VAT	17,53,913	KL019432472202122E
Total			1,24,17,714	

12. In view of the above, we accept the contention of the Assessee that the deduction under Section 43B of the Act was claimed in respect of payment of Taxes already made as certified by the Tax Auditor in

Clause 26(i)(A)(a)(4). Thus, the CIT(A) had proceeded to reject the submissions advanced by the Assessee without appreciating the aforesaid factual matrix and the material on record.

13. We also find merit in the contention advanced on behalf of the Assessee, that the Assessee was not put to notice in terms of proviso(s) to Section 143(1)(a) of the Act before making the adjustment/disallowance of INR.5,31,52,923/- under consideration. Section 143(1)(a) of the Act read with Proviso(s) thereto specifically requires consideration of response, if any, sent by the Assessee in response to the intimation of the proposed adjustment while processing the return of income before making of the actual adjustment under Section 143(1)(a) of the Act. We have already noted hereinabove that the, notice dated 14/12/2022, was limited to the three issues stated in paragraph 4(a), 4(b) and 4(c), above. Thus, the action of CPC making disallowance of INR.5,31,52,923/- under Section 43B of the Act was contrary to the provisions contained in the Section 143(1)(a) of the Act read with Proviso(s) thereto.
14. In view of the above, given the facts and circumstances of the present case, we hold that the disallowance of INR.5,31,52,923/- made by the CPC under Section 143(1) of the Act in respect of deduction claimed by the Assessee under Section 43B of the Act cannot be sustained and is, therefore, deleted. Thus, Ground No. 1.1 and 1.3 raised by the Revenue are allowed. In terms of the aforesaid, Ground No. 5 raised by the Assessee is also treated as partly allowed. In view of the aforesaid, Ground 1.2, 1.4 and 1.5 are dismissed as being infructuous.

Ground No. 2

15. Ground No. 2 pertains to addition on account of re-measurement of defined benefit plan amounting to INR.9,57,84,365/- made by the

CPC.

16. The contention of the Assessee is that the aforesaid addition was made by the CPC even though the amount under consideration had already been offered to tax by the Assessee in the return of income.
17. On perusal of material on record, we find that the aforesaid submission made by the Assessee is factually correct. The Assessee had not credited INR.9,57,84,365/- (i.e., the amount pertaining to re-measurement of defined benefit plan) to the Profit & Loss Account and the Tax Auditor had duly reported the aforesaid fact in Clause 16(d)(1) of the Tax Audit Report [at Page 14 of the paper-book]. A perusal of SI.No 6(r) of Part A- OI 'Other Information' shows that the Assessee has suo moto disallowed INR.9,83,15,567/- as 'Any Other Disallowances'. The aforesaid amount consists of INR.9,57,84,365/- (i.e., the amount pertaining to re-measurement of defined benefit plan) and INR.25,31,202/- (i.e., the provision for GST disallowed). Thus, in effect, the Assessee had increased the profits by INR.9,57,84,365/-. Therefore, the inconsistency in amount mentioned in Income Tax Return at Sl. No. 5(d) of Part A : OI - 'Any other item of Income' and Tax Audit Report stand reconciled. In view of the aforesaid, we accept the contention of the Assessee that the addition of INR.9,57,84,365/- made by the CPC resulted in double taxation and that the CIT(A) had failed to appreciate this aspect. We have also perused the computation of income which also supports that the stand taken by the Assessee. Therefore, the addition of INR.9,57,84,365/- made by the CPC is deleted. Ground No. 2.1 to 2.4 raised by the Assessee are allowed.

Ground No. 3

18. Ground No.3 raised by the Assessee relates to computation of tax liability. In our view the grievance of the Assessee would be addressed in case the Assessing Officer is directed to re-compute the

amount of tax liability as per law while giving effect to the present order. Thus, the Assessing Officer is directed accordingly. In terms of the aforesaid, Ground No.3 raised by the Assessee is treated as allowed for statistical purpose.

Ground No. 4

19. Ground No.4 raised by the Assessee pertaining to denial of opportunity of personal hearing by the CIT(A) is dismissed as having been rendered infructuous in view of adjudication of Ground No.1 and 2 above.

Ground No. 6

20. Ground No.6 raised by the Assessee relates to levy of interest under Section 2345B of the Act and the same is disposed off as being consequential in nature.

In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 31.12.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.12.2024
Milan, LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai