

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

ITA No.544/RPR/2024
(Assessment Year:2017-18)

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| Dy. Commissioner of Income Tax-1(1), Aayakar Bhawan, Civil Lines, Raipur, 492001, Chhattisgarh | Grand Motors, Lodhi Para Chowk, Pandri, Raipur Chhattisgarh, 492001 |
| PAN: AAGFG8524P | |

CO No.01/RPR/2025

(Arises out of ITA no. 544/RPR/2024)

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| Grand Motors, Lodhi Para Chowk, Pandri, Raipur- 492001, Chhattisgarh | V s | Dy. Commissioner of Income Tax-1(1), Aayakar Bhawan, Civil Lines, Raipur-492001, Chhattisgarh |
| PAN: AAGFG8524P | | |
| (अपीलार्थी/Appellant) | : | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri Vinod Kumar Khatri, CA |
| राजस्व की ओर से /Revenue by | : | Shri S. L. Anuragi, CIT- DR |
| सुनवाई की तारीख/ Date of Hearing | : | 22.01.2025 |
| घोषणा की तारीख/ Date of Pronouncement | : | 23.01.2025 |

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal and cross objections are instituted at the instance of the department and assessee against / in favour of the order of Commissioner of Income Tax (Appeals), ADDL/ JCIT(A-1), Surat (in short "Ld. CIT(A)"), dated 21.10.2024, passed u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the Assessment Year 2017-18, which in turn arises from the intimation u/s 143(1) of the Act, issued on 24.03.2019 by Centralized Processing Centre (CPC), Income Tax Department, Bangaluru (in short "Ld. AO").

2. First, we shall be taking up the appeal of the revenue in ITA No. 544/RPR/2024, wherein grounds of appeal raised, reads as under:

1. *Whether on the facts and in the circumstance of the case and in law the Ld. Addl/JCIT (A)-1, Surat was justified in deleting the addition made by the OCIT CPC to the tune of Rs.3,05,92,653/- on account of unpaid VAT liability (as shown in Balance Sheet as on 31.03.2017 as per Tax Audit Report), as per provision of section 43B of the Income Tax Act, 1961.*
2. *Whether on the facts and in the circumstance of the case and in law, the decision of Ld. Addl/JCIT (A)-1, Surat was justified in deleting the addition made by the OCIT CPC to the tune of Rs.3,05,92,653/- by holding that unpaid VAT could have been disallowed has it been passed charged to Profit and loss account in view of ITAT Varanasi decision in the case of Smt. Husna Parveen vs Commissioner of Income Tax(Appeal), National Faceless Appeal Centre (NFAC), Delhi (ITA No.3VNS/2022 dated 25.8.2022) and the Supreme Court decision in the case of Chowringhee Sales Bureau (P.) Ltd. v. CIT [1973] 87 ITR 542 (SC).*

3. The brief facts of the case are that the assessee is a firm engaged in the business of Automative products, had filed its return of income for the AY 2017-18 on 05.03.2018, declaring gross total income at Rs. NIL. Subsequently, the Assessing Officer, CPC has processed the return of assessee and issued an intimation u/s 143(1) on 24.03.2019, making therein certain disallowances, thus, enhancing the total taxable income of the assessee at Rs.3,13,35,153/-. The specific disallowances are made u/s 43B on account of non-payment of liabilities towards VAT for Rs.3,05,92,653/- before the prescribed date of filing the return of income

u/s 139(1) of the Act and addition u/s 40(a)(ia) for Rs.7,42,500/-, on account of non-deduction of TDS on rent.

4. Aggrieved with the aforesaid additions, assessee preferred an appeal before the first appellate authority i.e., Ld. CIT(A) u/s 246A(1)(a) of the Act.

5. Contentions of the assessee were duly considered by the Ld. CIT(A) during the appellate proceedings before him, therefore, the addition regarding unpaid VAT liability was entirely vacated, whereas the addition u/s 40(a)(ia) is restricted to the extent of 30% at Rs.2,22,750/-, with the following observations / decision:

4. Decision:

4.1 I have carefully gone through the grounds of appeal raised by the appellant, Order passed by the AO CPC u/s. 143(1) of the I.T. Act and the facts submitted by the appellant. I hereunder adjudicate the appeal on the basis of material available on record.

4.2 The appellant has grounds on the addition of Rs. 3,05,92,653/-on account unpaid VAT liability reflected in balance sheet as on 31.03.2017. However, the appellant has submitted that VAT was not claimed in its Profit and loss account, hence there was no question of disallowance. It was also added that the firm had been maintaining a separate account and did not charge VAT to profit and loss account. The appellant has relied upon the various judgements of the appellate courts. The appellant has placed reliance on the judicial pronouncement of Chhatisgarh High Court in case of ACIT vs. M/s. Ganpati

Motors having ITA NO. 30 of 2016 [Bilaspur] wherein the Hon'ble court has confirmed the findings of the lower appellate authority that when VAT has not been charged to the P&L account, it cannot be disallowed being claimed as deduction in Books of accounts. I hereby agree with the claim of the appellant and allow the ground raised. Unpaid VAT could have been disallowed had it been passed charged to Profit and loss account.

4.3. Another ground raised by the appellant is regarding addition of Rs.7,42,500/- made by the AO CPC u/s. 40(a)(ia) of the I. T.Act, 1961.The AO CPC has disallowed Rs.7,42,500/-as expense on Rent on account of non-deduction of TDS thereon. The appellant has requested that disallowance may kindly be restricted to 30% of the amount. Section 40(a)(ia) reads as under:-

"Section 40(a){ia}

{ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XV/1-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section

(1) of section 139:

***Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:*

***Provided further** that where an assessee falls to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-Bon any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the Assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the 38[resident} payee referred to in the said proviso.*

As per the extant law, the AO ought to have make disallowance to the extent of 30% of the rent paid of Rs.7,42,500/- if TDS has not been deducted thereon. Accordingly, the judicial AO is hereby directed to make disallowance of 30% of Rs.7,42,500/- i.e, Rs.2,22,750/-.

4.4 In view of the above facts of the case grounds raised by the appellant is hereby addressed and allowed.

6. Aggrieved with the relief *qua* the unpaid VAT liability of Rs.3,05,92,653/- granted by the Ld. CIT(A), revenue filed the present appeal for our consideration.

7. At the outset, Shri S. L. Anuragi, Ld. CIT DR vehemently submitted that the findings of the Ld. AO are justifiable, whereas Ld. CIT(A) was not justified in deleting the addition made by the Ld. AO on account of unpaid VAT liability as shown in balance sheet as on 31.03.2017 and this fact is emanating from the Tax Audit Report of the assessee, therefore, the same is not allowable as per provisions of section 43B of the Act, therefore, the order of Ld. CIT(A) is liable to be set aside and the addition made by the Ld. AO deserves to be sustained.

8. Per contra, Ld. AR on behalf of the assessee Shri Vinod Kumar Khatri, CA, submitted that the issue in present case is squarely covered by the judgment of Hon'ble Jurisdictional High Court of Chhattisgarh in the case of sister concern of the present assessee, **M/s Grand Motors,**

Bilaspur vs ITO, Ward -2(1), Bilaspur in TAXC No. 207/2024 dated 25.11.2025, wherein the issue regarding unpaid VAT liability which is not claimed as an expenditure / deduction in the books of accounts, also the same was not paid of on or before the due date of furnishing the return in relation to previous year u/s 139(1) of the I. T. Act, the same is not liable to be disallowed. The relevant findings including the arguments by the counsels of assessee and department are extracted as under:

6. *Mr. S. Rajeswara Rao, learned counsel appearing for the appellant/ assessee, would submit that the appellant did not claim any deduction of indirect taxes including VAT / other taxes in computing the income for the previous year and the appellant is following the exclusive method of accounting for indirect taxes as in the past. He would further submit that Section 43B of the IT Act mandates that a deduction otherwise allowable under the Act shall be allowed only in computing the income referred in Section 28 of that previous year in which such sum is actually paid by the assessee and since the appellant did not claim any deduction of indirect taxes in computing the income for the previous year i.e. the profit and loss account as expenditure, therefore, the CIT(A) and the ITAT, both, have concurrently erred in dismissing the appeal of the appellant assessee. He would rely upon the decision of this Court in the matter of Assistant Commissioner of Income Tax-I v, M/s Ganapati Motors to buttress his submission.*
7. *Mr. Amit Chaudhari, learned Standing Counsel for the Income Tax Department / Revenue, would submit that the appellant did not claim the said amount of 62,32,262/- in his profit and loss account as expenditure and the case is covered by the decision rendered by this Court in M/s Ganapati Motors's case (supra).*

8. *We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.*
9. *In order to consider the plea raised at the Bar, it would be appropriate to notice Section 43B(a) of the IT Act, which states as under: -*

"43B. Certain deductions to be only on actual payment.

-Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

- (a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force,*
- or*

xxx xxx xxx

10. *In this regard, decision of this Court in M/s Ganapati Motors's case (supra) would be more relevant in which the issue before the Court was, whether Section 43B of the IT Act is attracted even when the assessee does not claim any deduction on the strength of that provision and considering the said question, this Court held in paragraph 3 as under: -*

"3. The Assessing Authority, on the instant issue, noticed that the assessee's claim regarding the treatment of VAT in the Books of Accounts has been verified from the Books and chat has been found to be in order. The Assessing Authority also found that VAT has been found separately accounted for in the Books of Accounts. The only ground on which the Assessing Authority refused to exclude the VAT collected by the dealer from the profit of business is on the basis that the VAT component was not paid off on or before the due elate for furnishing the return in relation to the previous year under Section

139(1) of the Income Tax Act. The First Appellate Authority also noticed that it is an undisputed fact that the Appellant did not charge VAT to the Profit and Loss account. It was therefore noted by the First Appellate Authority that in such circumstances, the liability may still be unpaid, but it cannot be disallowed being not claimed as deduction in the Books of Accounts."

11. Similarly, the Delhi High Court in the matter of Commissioner of Income-tax v Noble & Hewitt (I) (P.) Ltd.2 held in paragraph 6 as under: -

"6. In our opinion since the assessee did not debit the amount to the Profit & Loss Account as an expenditure nor did the assessee claim any deduction in respect of the amount and considering that the assessee is following the mercantile system of accounting, the question of disallowing the deduction not claimed would not arise."

12. Reverting to the facts of the case, it is admitted position on record that the appellant / assessee did not claim the amount of 62,32,262/- in his profit and loss account as an expenditure / deduction, nor the appellant claim deduction in respect of that account under Section 43B of the IT Act. In that view of the matter, the Assessing Officer, the CIT(A) and the ITAT, all three authorities have concurrently erred in holding that the appellant has claimed deduction / expenditure under Section 43B of the IT Act adding to its taxable income. Accordingly, the impugned order passed by the HAT holding that the appellant is liable to pay tax on 62,32,262/-, is liable to be and is hereby set aside. The substantial question of law is answered in favour of the assessee and against the Revenue.

9. It is further mentioned by the Ld. AR that Ld. CIT(A) had followed the judicial pronouncement by the Hon'ble Chhattisgarh High Court in the case of **ACIT vs M/s Ganapati Motors (supra)**, which is principally agreed to by the Hon'ble Jurisdictional High Court in the case of Assessee's sister concern i.e., **M/s Grand Motors, Bilaspur (supra)**, therefore, the order of Ld. CIT(A) cannot be held as erroneous, thus, the same merits approval.

10. We have considered the rival submissions, perused the material available on record and case laws relied upon by the parties. Admittedly, the issue in present case *qua* the admissibility of unpaid VAT liability which was not paid on or before the due date for furnishing the return u/s 139 of the Act, if the same is not charged to P&L Account, the same cannot be disallowed being not claimed as deduction in the books of accounts. We may herein note that on this issue the revenue through its Ld. Standing Counsel had accepted that the said amount was not claimed as an expenditure in P&L Account and the case is covered by the decision rendered by Hon'ble Jurisdictional HC in the case of **M/s Ganapati Motors (supra)**, under such admission by the revenue, the contentions raised before us are found to be bereft of any substance. Regarding reliance of the department on the judgment of Hon'ble Apex Court in the case of **Chowringhee Sales Bureau (P) Ltd. Vs CIT, AIR 1973 SC 376, (1973) 87 ITR (542)**, it would be worth noting that the same has been duly considered and discussed by the Hon'ble

Jurisdictional HC, while pronouncing the judgment in the case of **Ganapati Motors (supra)**, therefore the same cannot be any help.

11. In view of aforesaid facts, circumstances and observations, we are of the considered view that the issue in present appeal assailed by the revenue is squarely covered in favour of the assessee by the judgment of Hon'ble Jurisdictional HC in the case of **M/s Grand Motors, Bilaspur (supra) i.e.**, sister concern of the present assessee, therefore, in absence of any contradictory decision of the Hon'ble Jurisdictional HC or by Hon'ble Apex Court, we do not find any infirmity in the order of Ld. CIT(A), the same, therefore, stands uphold.

12. Consequently, **grounds of appeal of revenue** raising the sole controversy **stands dismissed.**

13. Resultantly, **ITA No. 544/RPR/2024** of the revenue stands **dismissed.**

CO No. 1/RPR/2025 of the assessee

14. **Grounds of Cross Objection:**

1. *The Ld. CIT(Appeal) has rightly deleted the addition of Rs. 30592653/- on account of vat which is not passed through profit and loss account. This issue has been decided by jurisdictional C.G. High Court in the case of Ganapati Motors vs State of Chhattisgarh and in*

the assessee's own sister concern case Grand Motor Bilaspur of AY 2018-19

2. The appellant reserves the right to add, alter and omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.

15. Regarding grounds of CO raised by the assessee, it was the submission by Ld. AR that the CO is only supportive to the impugned order of Ld. CIT(A), which is challenged by the revenue and the assessee do not wish to raise any other contention.

16. Considering the aforesaid submission by the Ld.AR, since the appeal of revenue against the impugned orders of Ld. CIT(A) has been dismissed by us in terms of our observations hereinabove, the grounds of CO filed by the assessee became academic, thus, the same does not require any adjudication. Consequently, the CO of assessee become infructuous, the same, therefore has been rendered as dismissed.

17. In result, **CO NO. 1/RPR/2025** of the assessee stands **dismissed**.

18. In combined result, the **captioned appeal of revenue and CO of assessee, both stands dismissed** in terms of our aforesaid observations.

Order pronounced in the open court on 23/01/2025.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 23/01/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- DCIT-1(1), Raipur
2. प्रत्यर्थी / The Respondent- Grand Motors, Raipur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. The Pr. CIT, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur