

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.2485/Kol/2024

Assessment Year: 2020-21

DCIT, Circle-11(1), Kolkata.....Appellant

vs.

AVR Storage Tank Terminals Pvt. Ltd.Respondent

232/A, Acharya Jagadish Chandra Bose Road,

Minto Park, Kolkata-20.

[PAN: AAFCA6801R]

Appearances by:

Shri Aakash Agarwal, AR, appeared on behalf of the appellant.

Shri Sailen Samadder, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 25, 2025

Date of pronouncing the order : February 25, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the revenue against an order dated 17.04.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the Registry has informed that there is a delay of 159 days in filing the present appeal. The revenue filed an application for condonation of delay stating reasons for such delay. After considering the application, we find reasonable cause and the delay was not intentional. We, therefore, condone the delay in filing the appeal and adjudicate the appeal on merits of the case.

3. The present appeal has been filed by the revenue challenging various grounds. However, the primary contention of the revenue is that the Id. CIT(A) erred in allowing deduction for payment of education cess and higher education cess which is against the provisions of Income Tax

Act. The revenue argued that the ld. CIT(A) ignored the decision of Hon'ble Supreme Court in the case of PCIT vs. Chambal Fertilizers & Chemicals Ltd. in SLP(C) No.7379 of 2019 dt. 14.12.2022.

4. On the other hand, the ld. AR submitted that the impugned order dated 17.04.2024 for the assessment year 2020-21 was already challenged by the assessee before this Tribunal. He further contended that the ld. CIT(A) decided the appeal on the issues which were never raised by the assessee before him. Considering the matter, this Tribunal by its order dated 06.12.2024 had already set aside the impugned order dated 17.04.2024 and remanded the matter back to the file of the ld. CIT(A) with a direction to decide the appeal on correct grounds which were raised by the assessee after providing reasonable opportunity of being heard to the assessee. He further submitted that since the impugned order dated 17.04.2024 was not passed on correct facts and without addressing actual issues raised by the assessee, therefore, the instant appeal of the revenue has become infructuous. Additionally, the ld. AR stated that the assessee had already disallowed the education cess at the time of framing of assessment order by its own, therefore, at this stage, the issue of challenging the order does not arise before this Bench.

5. We, after hearing the rival submissions and perusing the materials available on record, find that through the instant appeal, the revenue has challenged the impugned order dated 17.04.2024 for the assessment year 2020-21. We note that since the impugned order dated 17.04.2024 was previously challenged by the assessee and set aside by the Tribunal vide order dated 06.12.2024 directing the ld. CIT(A) to re-examine the issues afresh, therefore, the grounds raised by the revenue in the instant appeal becomes infructuous. We further note that the Tribunal in his order noted that the ld. CIT(A) decided the issues which were never raised by the assessee, therefore, the Tribunal set aside the impugned

order dated 17.04.2024 of the ld. CIT(A) and directed the ld. CIT(A) to examine afresh the correct issues raised by the assessee. We observe that since the matter has already been remanded back to the file of the ld. CIT(A) for fresh adjudication, therefore, the instant appeal of the revenue falls no merits or unwarranted. In view of the above, the present appeal of the revenue is dismissed as infructuous.

6. In the result, the captioned appeal of the revenue is dismissed.

Kolkata, the 25th February, 2025.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 25.02.2025.

RS

Copy of the order forwarded to:

1. DCIT, Circle-11(1), Kolkata
2. AVR Storage Tank Terminals Pvt. Ltd.
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches