

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.04 & 05/Agra/2014
Assessment Years: 2006-07 & 2007-08**

A.C.I.T., Circle 4(1), Agra

**vs. Dakshinanchal Vidyut Vitran
Nigam Limited**

220-KV, Sub-station,
Bye Pass Road, Agra.
(PAN –AACCD 0695 D).

(Appellant)

(Respondent)

Appellant by : Shri Anirudh Kumar, CIT (D.R.)
Respondent by : Shri Deependra Mohan &
Miss. Prarthana Jalan, CAs

Date of hearing : 02.04.2014
Date of pronouncement : 29.04.2014

ORDER

PER PRAMOD KUMAR, ACCOUNTANT MEMBER:

By way of these appeals the Revenue has challenged correctness of the consolidated order dated 23.09.2013 passed by the Id. CIT(A)-II, Agra in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the Assessment Years 2006-07 & 2007-08.

2. The issues involved in these appeals are identical and arises out of common set of facts, both of these appeals were heard together, and, as a matter of convenience, both these appeals are decided by this common order.

3. Since common grounds have been raised by the Revenue in both these appeals, grounds raised in ITA No.04/Agra/2014 are reproduced as under :-

“1. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in directing the AO to ascertain the amounts of electricity duty and provident fund thereby allowing relief and in directing the AO to allow depreciation after examination of the computation thus disposing of the appeal by essentially setting aside the assessment, a power which had been taken away (omitted) by the Finance Act, 2001 and the CIT(A) is no longer vested with such power w.e.f. 01.06.2001.

2. That the order of Ld. Commissioner of Income Tax (Appeals) being erroneous in law and the decision being unlawful deserves to be quashed and that of the Assessing Officer deserves to be restored.

3. That the appellant craves leave to add or alter any or more ground or grounds of appeal as may be deemed fit at the time of hearing of the appeal.”

4. The aforesaid grounds and the record reveal that there are two issues which require adjudication in both these appeals - (1) disallowance under section 43B of the Income Tax Act, 1961 and (2) disallowance of depreciation. While assailing the impugned order on both the issues under consideration, the Id. Departmental Representative relied upon the findings given by the Assessing Officer. The Id. Departmental Representative further argued that the Id. CIT(A) was not justified in directing the A.O. to ascertain the amount of electricity duty and provident fund and also directing to allow depreciation after examination of computation of income.

5. On the other hand, ld. Counsel for the assessee contended that the ld. CIT(A) while disposing of both the issues under consideration has taken into account the appellate order for A.Y. 2004-05 giving similar relief to the assessee. The ld. CIT(A) has also observed that the appellate order for A.Y. 2004-05 was challenged by the Revenue before the Tribunal in ITA No.179/Agra/2011 where the Agra Bench of ITAT vide order dated 21.09.2012 has upheld the order of ld. CIT(A) for A.Y. 2004-05. Hence the issues under consideration in the present appeals are covered in favour of the assessee by the order dated 21.09.2012 (supra) of ITAT, Agra Bench.

6. We have heard the rival contentions and perused the material on record. We find that the contention of the assessee is acceptable. Ld. Counsel for the assessee has filed copy of order dated 21.09.2012 of ITAT Agra bench wherein this Bench of the Tribunal while upholding the order of ld. CIT(A) on both the issues under consideration has held as under :-

“5. On consideration of the rival submissions, we do not find any merit in this ground of appeal of the Revenue. The facts noted by the ld. CIT(A) in the impugned order as referred to above, are not in dispute. Copy of debit note is filed at page 35 of the paper book to support the claim of assessee that the amount in question was paid during the accounting period and such amount was paid before the due date of filing of the return. Such an adjustment has been approved by the ITAT, Ahmedabad Bench in the case of M/s. Madhya Gujrate Vij Company Ltd. (supra) and was held to be sufficient compliance u/s. 43B of the IT Act. It is well settled law for deduction u/s. 43B that

the deduction is allowable on actual payment and when PF contributions are made before filing of the return, the same is allowable deduction. We rely upon the decision of Hon'ble Delhi High Court in the case of CIT vs. P.M. Electronics Ltd., 313 ITR 161 and decision of Hon'ble Supreme Court in the case of CIT vs. Vinay Cement Limited, 213 CTR 268 and CIT vs. Alom Extrusions Ltd., 319 ITR 306. In view of the above discussion, this ground of appeal of the Revenue has no merit and is dismissed.”

“8. On consideration of the above, we do not find any merit in these grounds of appeal of the revenue. The assessee has filed details of aggregate assets and liabilities which were received on 31.03.2003 and the net fixed assets received on transfer scheme was Rs.834.01 crores and the assessee claimed depreciation at the lowest rate and whatever addition in the assets was made, the ld. CIT(A) has allowed 50% of the claim of the assessee. We, therefore, do not find any infirmity in the order of the ld. CIT(A) in granting relief to the assessee on this issue. In the result, the remaining grounds of appeal of the Revenue are also dismissed.”

7. As evident from a plain look at the ground of appeal, the actual grievance of the appellant is not on merits but on the legal issue regarding limitations on the powers of the CIT(A) on the ground that post 1st June 2001, it is no longer open to the Commissioners (Appeals) to remit the matter to the file of the Assessing Officer, whereas in the instant case, learned CIT(A) has done precisely that. While appellant is right in principle but that aspect of the matter is no longer of any practical significance because neither the assessee has raised any grievances on merits nor such a grievance as is raised before us, even if upheld, will affect the powers of this Tribunal in remitting the matter to the file of the Assessing Officer. Revenue thus derives no practical advantage from raising this issue before us.

8. In view of the above discussions, as also bearing in mind entirety of the case, we see no reasons to interfere in the matter. In any event, even on merits, the issue regarding merits of impugned additions is covered, in favour of the assessee, by an order of this bench. The technical infirmity, as pointed out in the grounds of appeal, is of no practical significance so far as impugned additions are concerned. Therefore, both the appeals filed by the Revenue are found to have no merit and are thus liable to fail.

9. In the result, both the appeals of the Revenue are dismissed.

(Order pronounced in the open Court on 29.04.2014)

Sd/-
(BHAVNESH SAINI)
Judicial Member

Sd/-
(PRAMOD KUMAR)
Accountant Member

Date: 29th April, 2014

PBN/*

Copy of the order forwarded to:-

1. Appellant
2. Respondent
3. CIT (Appeals) concerned
4. CIT concerned
5. D.R., ITAT, Agra Bench, Agra
6. Guard File.

By Order

Sr. Private Secretary
Income Tax Appellate Tribunal, Agra
<http://taxguru.in/> True Copy