

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 174/Kol/2023

Assessment Year: 2018-19

DCIT, Circle-5(1), Kolkata	Vs.	M/s Medica Hospitals Pvt. Ltd. (PAN: AAFCM 0338 M)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	31.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	18.07.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. M. Surana, Advocate
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 12.08.2022 for the AY 2018-19.

2. After hearing the ld DR , we note that the delay in filing the appeal of 144 days is due time taken in completing the formalities connected with the preparation of appeals papers. The DR also stated that due to huge work load and pre-occupation of the departmental officials in completing the time barring assessments , penalties and writs filed various assessee on the issue of 148A of the Act , the appeal was late filed by 144 days. Considering all the facts into consideration we are of the view that there is a reasonable cause for delayed filing of appeal which deserves to be treated leniently. Accordingly we are inclined to condone the delay of 144 days and admit the appeal for adjudication.

3. Issue raised in ground no. 1 by the revenue is against the deletion of addition of Rs. 1,14,64,199/- by Ld. CIT(A) as made by the AO on account of outstanding dues u/s 43B of the Act.

4. Facts in brief are that the assessee filed return of income on 30.10.2018 which were processed u/s 143(1) of the Act on 21.12.2019. In the order u/s 143(1) of the Act the AO CPC made disallowance on account of bonus outstanding of Rs. 1,14,64,199/- and gratuity provisions of Rs. 1,45,57,599/- besides making other disallowances on account of contribution to PF & ESI. The assessee moved rectification application on 29.02.2020 which was also rejected by the AO on 3.6.2020. In fact the auditor of the assessee has shown bonus outstanding Rs. 1,14,64,199/- on the date of audit which was much prior to the due date of filing the return and the said bonus was paid between 29.09.2018 to 29.10.2018 within the due date of filing of return of income. Accordingly the assessee claimed that the said amount was paid within the due date as contemplated u/s 139(1) of the Act.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by giving finding a fact that the bonus payable amount of Rs. 1,14,64,199/- as reported in tax audit report dated 28.09.2018 has been paid by the assessee before 29.10.2018 and accordingly the addition was deleted by the Ld. CIT(A) by holding that the said amount is to be allowed as it was paid before the due date of filing of return as the payment is not covered u/s 43AB of the Act.

6. After perusing the TAR and other evidences filed before us we note that the outstanding amount of bonus of Rs. 1,14,64,199/- was paid after 29.09.2018 but on or before 29.10.2018. Thus the bonus was paid before the due date of filing of return. Therefore the Ld. CIT(A) has correctly allowed this amount to the assessee by directing the AO to delete the disallowance. Consequently we are inclined to uphold the order of Ld. CIT(A) by dismissing the ground no. 1 in the appeal of the revenue.

7. Issue raised in ground no. 2 is against the deletion of addition of Rs. 1,45,57,599/- as made by the AO u/s 40A(7) of the Act.

8. Facts in brief are that the AO CPC disallowed and added Rs. 1,45,57,599/- u/s 40A(7) on account of gratuity provisions. In the appellate proceedings, the Ld. A.R submitted that the tax auditor has disallowed the provisions of gratuity twice by reporting the same first time in column 21(e) of the TAR wherein the amount not allowable u/s 40A(7) of the Act was mentioned and again disallowed in column no. 26(i)(B)(b)(10) in the Tax audit report wherein the amount not paid before specified date is to be mentioned and thus this resulted double disallowance. The Ld. CIT(A) after taking into account of the assessee's submissions and tax audit report recorded a finding that this amount was disallowed twice and directed the AO to delete the amount of Rs. 1,45,57,599/-.

9. After hearing the rival contentions and perusing the materials on records , we find that amount of gratuity provisions have been disallowed twice as stated above which has been correctly deleted by the Id CIT(A) after taking into account the facts on record , appellate order and contentions made by the assessee. In view of this we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

10. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 18th July, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 18th July, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-5(1), Kolkata
2. Respondent – M/s Medica Hospitals Pvt. Ltd., 127, Mukundapur Kolkata, South 24 Parganas, Kolkata-700099.

3. Ld. CIT(A)- NFAC, Delhi
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata