



**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC - C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT**

|                           |
|---------------------------|
| ITA No.1641/Bang/2024     |
| Assessment Year : 2018-19 |

|   |     |                                 |
|---|-----|---------------------------------|
| Shri. Kadharegowda Siddaraju,<br>2909, Maharaja Complex Jai<br>Bhuvaneshwari Bar and Restaurant,<br>B. N. Rod, Lashkar Mohalla,<br>Mysuru – 570 001.<br><b>PAN : ATOPS 8978 E</b> | Vs. | ITO,<br>Ward – 1(1),<br>Mysuru. |
| APPELLANT   |     | RESPONDENT                      |

|             |   |   |
|-------------|---|---|
| Assessee by | : | Smt. Pratibha, Advocate                               |
| Revenue by  | : | Shri. Ganesh R Gale, Standing Counsel for Department. |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 23.10.2024 |
| Date of Pronouncement | : | 23.10.2024 |

**ORDER**

***Per George George K, Vice President:***

This appeal at the instance of the assessee is directed against the CIT(A)'s Order dated 28.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The solitary issue that is raised is whether CIT(A) has erred in confirming the disallowance of expenditure claimed under section 37 of the Act to the extent of Rs.2,74,202/-.

3. Brief facts of the case are as follows:

Assessee is an individual. For the Assessment Year 2018-19, the return of income was filed on 31.10.2018 declaring total income of Rs.3,93,310/-. The Assessment was selected for scrutiny and notice under section 143(2) of the Act was issued on 22.09.2019. Assessment under section 143(3) of the Act was completed vide Order dated 26.02.2021 assessing total income at Rs.6,67,525/-. The AO made an addition of Rs.2,74,202/- on account of disallowance of payment of penalty of VAT.

4. Aggrieved by the Assessment Order, assessee filed appeal before the First Appellate Authority. The CIT(A) confirmed the disallowance made by the AO and dismissed the appeal of the assessee.

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. Assessee has filed a Paper Book enclosing therein copy of the statement of the income, profit and loss account, balance sheet for the relevant Assessment Year, copy of the Orders of the Karnataka Value Added Tax for the Financial Years 2014-15 and 2015-16, Order of the VAT authorities dated 21.02.2019 for waiver of penalty for the Financial Years 2014-15 and 2016-17, copy of the details of the arrears of VAT paid during the relevant Assessment Year, etc. The learned AR submitted that the penalty levied under the Karnataka Value Added Tax for the Assessment Years 2014-15 and 2016-17 were waived by the authorities and what has been actually paid in the current Assessment Year is only arrears of VAT. It was submitted that the arrears of VAT are not penal in nature and same is to be allowed as deduction under section 37 of the Act. The learned AR submitted that the Order of the VAT authorities waiving penalty for Assessment Years 2014-15 and 2016-17

though furnished before the AO and CIT(A) has not been taken note and requested that the issue may be restored to the files of the AO.

6. The learned Standing Counsel did not have a serious objection for the matter to be restored to the files of the AO for proper examination of the issue.

7. I have heard the rival submissions and perused the material on record. The details of the VAT paid for the relevant Assessment Year are furnished at page 24 of the Paper Book filed by the assessee. It is the claim of the assessee that the total payment for the relevant Assessment Year of Rs.17,08,746/- pertains to the VAT arrears and not the penalty. On perusal of the Order of the Karnataka VAT authorities which is placed on record for Assessment Years 2014-15 and 2016-17 from pages 19 to 22 of the Paper Book, I find that the penalty has been waived off. In this context, I find that the Order of waiver by the Karnataka VAT authorities has not been referred to by the AO nor by the CIT(A).

8. In light of the above, I am of the view that the matter needs fresh examination at the level of the AO. Accordingly, the issues raised in this appeal are restored to the files of the AO. The AO is directed to take into account the waiver Order passed by the Karnataka VAT authorities and examine whether a sum of Rs.2,74,202/- which has not been allowed as a deduction under section 37 of the Act is penal in nature or not. If it is penal in nature, the same cannot be allowed as deduction under section 37 of the Act. On the other hand, if payment of Rs.2,74,202/- is not penal in nature, the same ought to be allowed as a deduction under section 37 of the Act. With the aforesaid observation, the matter is restored to the files of the AO. The AO shall afford reasonable opportunity of being heard to the assessee before a decision is taken in the matter. It is ordered accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(GEORGE GEORGE K)**  
**Vice President**

Bangalore.

Dated: 23.10.2024.

/NS/\*

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent           |
| 3. DRP        | 4. CIT                  |
| 5. CIT(A)     | 6. DR, ITAT, Bangalore. |
| 7. Guard file |                         |

By order

Assistant Registrar,  
ITAT, Bangalore.