

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**ITA No. 197 of 2017 (O&M)
Date of decision: 5.5.2017**

The Principal Commissioner of Income Tax (Central), Ludhiana

.....Appellant

Vs.

**M/s Bright Enterprises Private Limited, Jalandhar, MBD House,
Railway Road, Jalandhar**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Rajesh Katoch, Senior Standing counsel for the appellant.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.10.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (in short, "the Tribunal") in I.T.A. No.518(Asr)/2014 for the assessment year 2010-11, claiming following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Hon’ble ITAT has erred in deleting the addition of ₹ 14,94,648/- made by the Assessing Officer on account of Gratuity payable without appreciating the fact that the

gratuity fund of the assessee was unapproved and as per Section 40A(7) of the Income Tax Act, 1961, no provision can be made is allowable when such amount is kept in an unapproved fund?”

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent- assessee is running a Hotel known as Radisson MBD at Noida (UP). During the course of assessment year 2010-11 it was noticed by the Assessing Officer that the assessee company had shown employees credit of ₹ 28,74,558/- under the head ‘sundry payable account’ which included a sum of ₹ 14,94,648/- on account of ‘gratuity payable’. It was found that the gratuity fund of the assessee was not approved fund within the meaning of Section 40A(7) and Schedule-IV of the Act. In view of the unapproved status of the assessee is Gratuity fund the amount of ₹ 14,94,648/- of ‘Gratuity payable’ was added to the income of the assessee vide order dated 28.03.2017, Annexure A.1. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 08.05.2014, Annexure A.2, the CIT(A) deleted the addition of ₹ 14,94,648/-. Not satisfied with the order, the revenue filed an appeal before the Tribunal. Vide order dated 28.03.2013, Annexure A.3, the Tribunal confirmed the order passed by the CIT(A) deleting the addition of ₹ 14,94,648/- and dismissed the appeal filed by the revenue. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. It has been noticed by the Tribunal in its order dated 28.10.2016, Annexure A.3, that the CIT(A) observed that the impugned

balance of gratuity payable amounting to ₹ 14,94,648/- had been created in the assessment year 2008-09 and the same had been added back in the computation for the said assessment year. It was further observed that the current balance was only a brought forward balance and no such provision had been created during the year under consideration which meant that no such debit had been effected in the profit and loss account for the year under consideration. Thus, the addition made by the Assessing Officer was directed to be deleted. After examining, the matter and perusing the findings recorded by the authorities below. The Tribunal concurred that the gratuity payable related to the assessment year 2008-09 which was added in the computation for the said assessment year. While concurring with the findings recorded by the CIT(A). The Tribunal dismissed the appeal filed by the revenue. The relevant findings recorded by the Tribunal read thus:-

“We find that the learned CIT(A) has made categorical findings that the gratuity payable related to the assessment year 2008-09 and the same was added in the computation for the said assessment year. The learned CIT(A) has further given finding of fact that the current balance is only a brought forward balance and no such provision had been created during the year under consideration which meant that no such debit had been affected in the profit and loss account. The learned DR was not able to controvert any of the findings of the learned CIT(A). In view of the above discussion, we do not find any infirmity in the order of the learned CIT(A) and therefore, the appeal of the revenue is dismissed.”

5. Learned counsel for the appellant-revenue has not been able to point out any error in the findings recorded by the Tribunal upholding

the view taken by the CIT(A), thus, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

May 05, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes