

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 362/KOL/2021
Assessment Year: 2019-2020**

***M/s. Stewart Holl (India) Limited,.....Appellant
Camellia House,
14. Gurusaday Road, Kolkata-700019
[PAN: AAEC3091C]***

-Vs.-

***Asistant Director of Income Tax,.....Respondent
CPC, Bangalore,
Centralised Processing Centre,
Income Tax Department,
Bangalore-560500, Karnataka***

Appearances by:

*Shri Soumik Roy and Shri Tanmay Dutta, A.R., appeared
on behalf of the assessee*

*Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : May 15, 2023

Date of pronouncing the order : May 19, 2023

O R D E R

Per Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal
against the order of Id. Commissioner of Income

Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 06.08.2021 passed under section 250 of the Income Tax Act, 1961 for A.Y. 2019-20.

2. At the outset, we notice that the assessee has filed an additional ground of appeal vide letter dated 2nd January, 2023 raising the issue that despite the disallowance of Rs.2,51,10,171/- on account of late deposit of employees' share towards Provident Fund contribution after the due date under the respective Act, the income has to be computed pursuant to Rule 8(1) of the Income Tax Rules, 1962 and thus the income of the assessee needs to be computed from the business of tea growing and manufacturing equal to 40% of total income determined in accordance with the Act and taxed accordingly.

3. The additional ground raised by the assessee reads as under:-

"That on the facts and in the circumstances of the case, and in law, the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as the ld. CIT(A)) erred in confirming the entire disallowance of Rs.2,51,10,171/- being the deposit of 'employees share towards Provident Fund contribution after the due date within the meaning of Explanation 1 of section 36(1)(va) of the Income Tax Act, 1961 (the Act) to the business loss as per return without considering application of rule of 8(1) of the Income Tax Rules, 1962 (the Rules) made for computing income from business of tea growing and manufacturing companies and followed by the appellant as the effective disallowance would

*be forty percent of Rs.2,51,10,171/- i.e.
Rs.100,44,068/-“.*

4. The facts in brief are that the ld. Assessing Officer, CPC vide intimation under section 143(1) of the Act dated 17.09.2020 disallowed a sum of Rs.2,51,10,171/- on account of late payment of employees' contribution to Provident Fund, which was deposited beyond the due date as stipulated under the relevant Act.

5. The ld. CIT(Appeals) dismissed the appeal of the assessee by holding that the employees' contribution to EPF has to be deposited within the time as stipulated under the relevant Act and not within the time allowed under section 139(1) of the Act. The assessee has challenged the said order of ld. CIT(Appeals) before the Tribunal. In the meantime, the Hon'ble Apex Court has decided the issue against the assessee in the case of Checkmate Services Pvt. Limited -vs.- CIT (2022) 143 taxman.com 178 (SC). Now the assessee has raised an additional ground before the Tribunal praying that despite the disallowance of Rs.2,51,10,171/-, the income has to be determined in accordance with the relevant provisions of the Act and Rule 8(1) of the Income Tax Rules, 1962 and assessed accordingly.

6. After hearing the rival contentions, perused the relevant material available on record and the issue raised by the assessee by way of an additional ground, we observe that no further

verification of facts is required on this issue as all the facts are available on record, and, therefore, we are inclined to admit the additional ground, which is in accordance with the ratio laid down by the Hon'ble Apex Court in the case of Jute Corporation of India Limited –vs.- CIT reported in (1991) 187 ITR 668 (SC) and National Thermal Power Company Limited –vs.- CIT reported in (1998) 229 ITR 383 (SC). We have perused the Rule 8(1) of the Income Tax Rules, 1962, which deals with the manner of computing the income from cultivation and manufacturing of tea. Sub-Rule (1) provides that “where the income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty per cent of such income shall be deemed to be income liable to tax”. Having considered the above Rule, we find merit in the contention of the assessee that the income of the assessee should be computed first after making the disallowance of Rs.2,51,10,171/- and whatever is the resultant income only 40% of that income has to be treated as taxable income in terms of Rule 8(1) of the Income Tax Rules, 1962. Since the issue requires no examination and verification of records, we are, therefore, restoring the issue to the file of Id. Assessing Officer to examine the same to compute the income in terms of our observations as stated above by following the Rule 8(1) of the Income Tax Rules. In other words, the Id. Assessing Officer is directed to compute the income after making disallowance in respect of EPF late deposit by the assessee and then recompute the taxable income by applying Rule 8(1) of the Income Tax Rules, 1962.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19th May, 2023.

Sd/-

**(Sanjay Garg)
Judicial Member**

Sd/-

**(Rajesh Kumar)
Accountant Member**

Kolkata, the 19th day of May, 2023

Copies to : (1) **M/s. Stewart Holl (India) Limited,
Camellia House,
14. Gurusaday Road, Kolkata-700019**

(2) **Asistant Director of Income Tax,
CPC, Bangalore,
Centralised Processing Centre,
Income Tax Department,
Bangalore-560500, Karnataka**

(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;

(4) *Commissioner of Income Tax-;*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.