

License fee for liquor vending won't fall within ambit of sec. 43B

Summary – The Bangalore ITAT in a recent case of Elite Enterprises., (the Assessee) held that where assessee was following cash system of accounting in respect of license fee paid to government in respect of arrack vending contract and the same was not claimed by assessee on accrual basis, could be allowed as deduction in subsequent assessment year

Facts

- During the relevant previous year, the assessee had taken on sub-lease all rights of retail vending of arrack in the shops of two taluks for 12 months and first 3 months of assessment year respectively. As per the lease agreement, the assessee was responsible to pay the kist to Government.
- The Assessing Officer noted a total difference of Rs. 95.85 lakhs in the claim of kist as per the agreement.
- The Assessing Officer held that except kist payment, the assessee had been accounting other expenditure on mercantile basis and that even if the expenses of kist payment were not claimed in the previous assessment year on accrual basis, same could not be allowed as deduction. He, thus, held provisions of section 43B to be inapplicable.
- The Commissioner (Appeals) allowed the claim of the assessee and held that the assessee essentially followed the cash system of accounting.
- On appeal to the Tribunal:

Held

- There is not dispute that since the year 2000 the assessee has been consistently following the accounting system wherein the kist payment, interest on kist and license fees have been accounted on payment basis. It is pertinent to note that prior to the judgment of jurisdictional High Court in the case *CIT v. Sri Balaji & Co.* [\[2000\] 246 ITR 750/\[2001\] 114 Taxman 682 \(Kar.\)](#) the revenue has been consistently taking a stand that the kist payment comes under the purview of section 43B and accordingly was disallowing the claim on accrual basis. Therefore prior to the said decision the revenue as well as the assessee were under the belief that the provisions of section 43B are applicable on kist payment. Even the department did not accept the judgment of jurisdictional High Court and challenged the same before the Supreme Court and upto the issue has been finally settled by the Supreme Court, the department was taking the stand that the provisions of section 43B are applicable on kist payment. Therefore, this treatment of accounting to a particular expenditure of kist payment is revenue neutral so far as the deduction in respect of this expenditure has not been claimed by the assessee on accrual basis in the earlier assessment year and consequently the assessee paid excess tax than what was due if the expenditure would have been claimed on accrual basis. It is also not disputed that more than 93 per cent of the expenditure has been accounted and

claimed by the assessee on payment basis right from the year 2000 till the assessment year under consideration. Even otherwise prior to the judgment of jurisdictional High Court in the case of *Balaji & Co. (supra)*, the said expenditure of kist was considered as allowable on payment basis. The Assessing Officer has examined all the expenditure booked by the assessee in the books of account and found that most of them are booked on the basis of payment but the Assessing Officer has deliberately stated that the same are not instrumental in determining the system of accounting.

- The Assessing Officer found that except kist payment, the assessee had been accounting other expenditure on mercantile basis. However it is not in dispute that more than 93 per cent of the expenditure pertains to the kist payment interest on kist and license fees which has been accounted on payment basis. Therefore, undisputedly in the business of the assessee almost entire expenditure is incurred in respect of purchase of goods by making advance payment or simultaneous payment as the payment was being made to the Government.
- The Assessing Officer found that out of total payment of Rs. 21.18 crores an amount of Rs. 20.14 crores was accounted on cash basis. Therefore, essentially the accounting system followed by the assessee is more of cash basis as it is the requirement of the nature of the business and less of mercantile basis.
- It is apparent that since beginning the assessee has been giving the treatment of kist payment on cash basis and the Assessing Officer accepted the same because of the reason that the department has taken a stand that the provisions of section 43B are applicable on the kist payment to the Government. Only after the judgment of Hon'ble jurisdictional High Court in the case of *CIT v. Sri Balaji & Co.* [\[2000\] 246 ITR 750](#) and final settlement of the issue of applicability of section 43B, the Assessing Officer first time disallowed the expenditure in question. Therefore, the assessee as well as revenue were under *bona fide* belief that the provisions of section 43B of the Act are applicable in respect of the kist payment.
- It is not the case of the department that this method of accounting of kist payment on cash basis is not consistently followed by the assessee. Therefore following this system of accounting consistently should not be disturbed in a particular year and particularly for the year under consideration when this claim was not made on accrual basis in the earlier year due to consistently followed accounting treatment otherwise it would result double taxation of the same income.