INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No. 1540/Del/2020
(Assessment Year: 2017-18)

Maksat Technologies Pvt Ltd, E-13, Ground Floor, Block No. B-1, Mohan Cooperative Estate, New Delhi PAN: AACCM7831L	Vs.	DCIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri I. P. Bansal, Adv Shri Vivek Bansal, Adv
Revenue by:	Shri Sohil Malik, Sr. DR
Date of Hearing	31/03/2021
Date of pronouncement	30/06/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT (A) dated 03.02.2020 for the Assessment Year 2017-18.
2. The assessee has raised the following grounds of appeal:-

1 *That under the facts and in the circumstances of the case the Ld. CIT(A) has erred in law as much as in fact in upholding the addition of Rs. 51,11,745/- made on account of disallowance of belated payment of employee's contribution towards EPF amounting to Rs 43,33,303/- and employees' contribution towards ESI amounting to Rs 7,78,442/- While upholding the disallowance Ld. CIT(A) has failed to appreciate that the disallowance could not be made:*

a. *As the payment towards employee's contribution of ESI and PF have been made either during the financial year under consideration or before the due date of filing of return as described in section 139(1) of the Income Tax Act, 1961.As per the landmark judgment passed by the Hon'ble Supreme Court in the case of CIT vs. Alom Extrusions Ltd. [(2009) 185 Taxman 416 (SC)]wherein it was held that the 'due date' means the due date of return of income as per section 139(1) not as per respective fund due date. Further, the Hlon'ble Delhi HC also stated that in the case of CIT vs. Aimil Ltd. [(2010) 188 Taxman 265(Delhi)] 'due date' means the due date of return of income as per section 139(1) not as per respective fund due date.*

b. *Ld. CIT(A) while upholding the disallowance has relied upon the decision of Hon'ble Delhi High Court rendered in the case of CIT vs. Bharat Hotels ltd. (2018) 410 ITR 417(Del.) which was rendered on September 6, 2018. The*

decision relied upon by the assessee in the case of CIT vs. Aimil Ltd.(supra) has been ignored on the ground that as per well settled law if two decisions are delivered by a Bench of equal strength, the later decision may be followed and which was also done by the Delhi ITAT in its decision rendered on December 12, 2019. Ld. CIT (A) has acted in violation of principle of natural justice as he did not confront the decision in the case of Bharat Hotels (supra) which was relied upon by him. In the process he has ignored another later decision of Delhi High Court of equal strength in the case of PCIT vs Pro Interactive Services (India) Pvt. Ltd. decision dated September 10, 2018 in ITA No. 938/2018. Even going by the logic adopted by Ld. CIT(A), the disallowance has been wrongly upheld.

2. *Without prejudice to the above and in the alternative, the disallowance of Rs. 51,11,745/- could not be made in its entirety and referring to the facts and circumstances of the case, the payment only of Rs. 2,22,538/- (Rs. 1,12,040 on 12-04-2017 + Rs. 1,10,498/- on 26- 04-2017) may be disallowed having been made beyond the financial year, since all other payments have been made within the relevant financial year.*
3. *Without prejudice to the above, if the disallowance Rs. 51,11,745/- is to be upheld in its entirety then the same may be directed to be allowed in the A.Y. 2018-19.*
4. *That under the facts and circumstances of the case Ld. CIT (A) has erred in law and in fact in restoring the matter back to the file of AO on the issue of disallowance of Rs. 7,75,519/- being the profit on sale of fixed assets particularly in view of the fact that all the facts were place before him and it was clear from the documents placed in the return that Block of Asset existed even after sale of assets."*

3. Brief facts of the case shows that the assessee is a company who filed its return of income on 28.10.2017 declaring total income of Rs. 6,39,64,480/-. On eprocessing of the return, the assessee was intimated communication dated 2 November 2018 by giving an assessee in opportunity to respond within 30 days about two errors of incorrect claims.

   a. That in schedule BP there is error in description with respect to Rs. 775519/-. The description shall in schedule BP row NumberA3c "income/receipt credited to profit and loss account considered Under other heads of income – other source value is more than the sum of row No 1 (a),1(b),1 (c) , 1(d) and 3 (a) other sources schedule. The assessees' response was that the above amount is profit on sale of fixed asset calculated as per the companies act while the same shall be allowable as deduction u/s 32 (1) (iii) of the income tax act. Therefore, there was a clerical mistake in selecting the group of income/receipt credited to the profit and loss account considered Under other heads of income state of deduction allowable u/s 32(1)(ii) . Moreover, this amount has been deducted from the opening written down value of the fixed asset the depreciation computation chart sent in the ITR. Hence, you are requested to consider this amount under the group of deduction allowable u/s 32 (1) (iii) instead of income/receipt credited to profit and loss account considered under other heads of income and rectify the mistake.

b. Second error was also notified by the CPC stating that disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the income tax return u/s 143 (1) (a) (iv) stating that any sum received from employees as a contribution to any provident fund or superannuation fund or any fund set up Under the ESI act or any other fund only welfare of employees to the extent not credited to the employees account on or before the due date u/s 36 (1) (va) . The response submitted by the assessee states that this amount was duly deposited by assessee before the due date of filing of income tax return u/s 139 (1) of the income tax act the auditor has reportedly actual date and due date of payment of employees contribution towards the ESI and provident fund as mentioned in column number 20 (B) of tax audit report. The Honourable apex court and Hon. jurisdictional High Court judgments were also pressed. So it is amply clear that the due date as mentioned in the aforesaid Section was due date of filing of ROI. Some of the case laws stated are of Hon. apex court in CIT versus Alom Extrusion Ltd [2009] 319 ITR 306, , Delhi High Court in CIT versus AIMIL Ltd ITA number 1063/2008, Punjab and Haryana High Court in CIT FBD V Hemla embroidery Mills private limited. In the light of above, facts assessee has not disallowed the same return of income and sale also be allowed during the processing of income tax return.

4. Thus, assessee disagreed with both the proposed adjustment. Considering the above response of the assessee, centralized processing centre processed the return of the assessee by passing an intimation u/s 143(1) of the Act, on 17 March 2019, wherein, in Annexure of business and profession [BP] the addition of Rs. 775519/- was made at Sl No. 3(c). Further, in Annexure AOI at Sl No. 6K a further adjustment of disallowances of Rs. 51,11,745/- were made on account of sum received from employees as contribution to provident fund to the extent not credited to the employee's account on or before the due date prescribed under the respective law. Consequently income from business or profession of the assessee was determined at ₹ 69,851,743/– against the returned income under that head of ₹ 63,964,479/–making the adjustment on account of profit and loss on sale of businesses of the 7,74,590/– and ₹ 5,111, 741/– being the amount of contribution received from the employees not deposited within the due date prescribed under the respective law.

5. Assessee aggrieved with the above information u/s 143 (1) of the income tax and has preferred an appeal before the LD CIT (A) who passed an order on 03.02.2020 partly allowing the appeal of the assessee. With respect to the addition of Rs. 51,11,745/- , he gave a direction to the ld AO to allow the claim of the assessee as per the law laid down by Hon'ble Delhi High Court in CIT Vs. Bharat Hotels Ltd 410 ITR 417. With respect to the

addition of Rs. 7,75,519/-, He also directed the LD AO to carry out the necessary verification and allow the same. The assessee is aggrieved with both the above direction of the LD CIT (A) and therefore, has preferred this appeal.

6. We have heard the LD AR on both these aspect. He submitted that as far as the disallowance made on account of payment of employees contribution to PF is not at all an incorrect claim as payment has been made by the assessee before the due date of filing of the return of income. He further stated that when the jurisdictional High Court has decided the issue holding that when the employee's contribution is deposited by the assessee before the due date of filing of the return of income, no disallowance can be made. He referred to the series of the decisions of Hon'ble Delhi High Court on this matter and the decision of the CIT Vs. Bharat Hotels Ltd, which has been referred by the LD CIT (A). He submitted that in subsequent decision also the Hon'ble Delhi High Court has also taken a view that employee's contribution of PF, if deposited before the due date of filing of return of income is not to be disallowed u/s 143 (1) of the income tax act. With respect to the addition of Rs. 7,75,519/- he demonstrated that it is a profit on sale of asset, which is wrongly bunched by the assessee, but for this reason, the addition cannot be made. He demonstrated that the treatment of the above sum for computation purpose has been correctly made. He referred to copy of the ledger account of the assessee and Profit and loss account . Thus, he submitted that the adjustment made by the centralized processing centre are erroneous and the learned CIT – A was also in error in directing the learned assessing officer to verify the claim of the assessing relying on the decision of the honourable Delhi High Court which is against the assessee so far as the issue of deposit of provident fund of employees contribution is concerned. He further submitted that the second adjustment of profit on sale of fixed assets is also apparent it cannot be adjusted. Therefore the CIT appeal should have deleted the addition holding that they could not have been made u/s 143 (1) of the income tax act.

7. The LD DR vehemently supported the orders of the lower authorities.

8. We have carefully considered the rival contention and perused the intimation passed u/s 143 (1) of the income tax act dated 17th of March 2090 and the order of the learned CIT – A were he has given direction to the learned assessing officer to examine the claim of the assessee and then decide it afresh. On careful reading of the communication of proposed adjustment made u/s 143 (1) (a) of the income tax Act which states that the return of income filed by the assessee contains the errors, incorrect claims, inconsistency which attracts adjustment as specified u/s 143 (1) (a) of the act. On careful reading of the provisions of Section 143 (1) of the act we find that it describes a manner of computation of the total income or loss as per the return of income filed by the assessee by permitting following adjustments:-

(*i*) any arithmetical error in the return;

(*ii*) an incorrect claim, if such incorrect claim is apparent from any information in the return;

[23][(*iii*) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(*iv*) disallowance of expenditure [23a]**[***or increase in income***]** indicated in the audit report but not taken into account in computing the total income in the return;

(*v*) disallowance of deduction claimed under [23b]**[***section 10AA or under any of the provisions of Chapter VI-A under the heading* "C.—Deductions in respect of certain incomes", *if***]** the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(*vi*) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Both the adjustment made by the centralised processing centre, it is stated that assessee has made an incorrect claim. Therefore, centralized processing centre has invoked clause 143 (1) (a) (ii) of the act. Thus according to the centralized processing centre the claim of the assessee of deduction of deposit of employees provident fund contribution to the credit of the employees' account though beyond the due date described Under the respective provident fund act but before the due date of the filing of the return of income is an incorrect claim. We find that the claim of the assessee is supported by the decision of the Honourable jurisdictional High Court and hence it cannot be said to be an incorrect claim. With respect to the second adjustments was merely an error of grouping of an adjustment of income shown in the annual accounts of the assessee for arriving at correct taxable income. It is not the case of the centralized processing centre that income has been incorrectly computed by assessee. Therefore, both the adjustment made by the centralized processing centre for which assessee disagreed and with respect to the disallowance u/s 36 (1) (va) supported it with several judicial precedents of the jurisdictional honourable High Court as well as the honourable Supreme Court making it clearly beyond the purview of an incorrect claim. Further the second of profit on sale of assets as per books of accounts, adjustment proposed is merely an error of grouping which does not make any impact on the total income. The adjustment made by the centralized processing centre has been incorrectly made resulting in double addition of ₹ 775,519/-. Thus, both the adjustment proposed by the centralized processing centre are not sustainable. The order of the learned CIT – A is also not sustainable as he directed learned assessing officer to examine the claim of the assessee. The mandate before the LD CIT – A was only to see whether the above adjustment is in

accordance with the law or not. Had it been the issue of examination, the case of the assessee would have been picked up for scrutiny. In view of this, we direct the learned assessing officer to delete both the above adjustment made in intimation u/s 143 (1)(a) of the Act. Accordingly, orders of the lower authorities are reversed and appeal of the assessee is allowed

Order pronounced in the open court on 30/06/2021.

Sd/-	Sd/-
(K. N. CHARY)	(PRASHANT MAHARISHI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated : 30/06/2021
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	30.06.2021
Date on which the typed draft is placed before the dictating member	30.06.2021
Date on which the typed draft is placed before the other member	30.06.2021
Date on which the approved draft comes to the Sr. PS/ PS	30.06.2021
Date on which the fair order is placed before the dictating member for pronouncement	30.06.2021
Date on which the fair order comes back to the Sr. PS/ PS	30.06.2021
Date on which the final order is uploaded on the website of ITAT	30.06.2021
date on which the file goes to the Bench Clerk	30.06.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	