

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 40/JP/2021
निर्धारण वर्ष / Assessment Years : 2019-20

Sohan Lal Tambi D-50, Jhakheshwar Marg, Bani Park, Jaipur.	बनाम Vs.	The ITO, Ward-1(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKPT 2087 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/08/2021
उदघोषणा की तारीख / Date of Pronouncement : 16/08/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Delhi (NFAC) dated 26.04.2021 for the assessment year 2019-20 wherein the assessee has raised the following grounds of appeal:-

"1. That the order passed by Id. CIT(A) is against the principles of natural justices as the same has been passed without considering the submissions given by the appellant in the online account of Web portal of the department.

2. That the order passed by Id. CIT(A) is bad in law as he failed to appreciate that disallowance under section 36(1)(va) is highly debatable issue and hence such adjustment is not permissible while processing the return under section 143(1) of the Income Tax Act, 1961.

3. That the Id. CIT(A) has erred in law in sustaining the disallowance made by Id. AO for Rs. 1,61,099/- being the amount collected from employees towards contribution to welfare funds but deposited later than the scheduled dates as per provisions of PF Act, but deposited prior to filing the return under section 139(1) of the income Tax Act, 1961 ignoring the binding judgment of the Honorable jurisdiction High Court of Rajasthan in the case of ITO vs. SBBJ (363 ITR 70)."

2. During the course of hearing, the Id AR submitted that the assessee had collected a sum of Rs. 2,17,664/- from its employees against their contribution towards Employees State Insurance and Provident Fund. As per provisions of ESI Act and PF Act all such contributions are required to be deposited within a certain time. However due to some difficulties, the assessee could deposit a sum of Rs. 1,61,099/- beyond the prescribed dates as per above said statutes. However, all such contributions were deposited prior to due date of filing ITR u/s 139(1) of the Act. The assessee's accounts are subject to audit u/s 44AB of the Income Tax Act, 1961 and in the prescribed form of audit report viz. form 3CD details of contributions received from the employees for welfare funds and their deposit into respective funds are required to be mentioned by the auditor wherein the contributions

deposited lately than prescribed dates under respective statute have been highlighted. The said audit reports were submitted to CPC prior to furnishing of return. While processing the returns, the CPC sent a communication to the assessee that the amounts deposited lately than prescribed under respective statute are liable to be disallowed in terms of section 36(1)(va) of the Income Tax Act, 1961. A reply was submitted drawing attention of CPC that such contributions deposited prior to due date of filing ITR are to be allowed in view of binding judgment of the Hon'ble Jurisdictional High Court of Rajasthan in the case of CIT v/s SBBJ 363 ITR 70. However not convinced with the same, the CPC disallowed such contributions and added the same in the returned income for both the years. The assessee filed first appeal before the Ld. CIT (A) drawing his attention towards the aforesaid judgment of the Hon'ble Rajasthan High Court. However, the Id CIT(A) has sustained the above adjustment by relying on the judgment of the Hon'ble Madras, Gujarat and Kerala High Court. Against the said order, the assessee is in appeal before this Tribunal.

3. In ground No. 2, the assessee has challenged the addition by way of adjustment as not permissible while processing the return U/s 143(1)(a) of the IT Act.

4. It was submitted by the Id AR that this ground was not taken before the Ld. CIT (A) due to inadvertent mistake. However, a request has been made to admit this ground being purely legal in nature and which goes to the root of the matter and is covered with the judgment of the Hon'ble Supreme Court in the case of NTPC 229 ITR 383.

5. It was submitted that provisions of section 143(1)(a) allows following types of adjustments to be made while processing the return of income:-

- i. Any arithmetical error
- ii. Any incorrect claim, if same is apparent from any information in return
- iii. Claim of set off of carried forward loss, if the return for the year of loss was furnished beyond stipulated date u/s 139(1)
- iv. Disallowance of expenditure indicated in the audit report but not taken in return
- v. Disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE if return furnished beyond stipulated date u/s 139(1)

6. It was submitted that the adjustment as proposed by CPC can be categorized in point no. ii or point no. iv above. However in point no. iv, it is mentioned that such claim must be as indicated by the auditor. In case of audit report u/s 44AB, the auditor only submits a factual position about contributions of employees towards welfare funds and its deposit into respective fund account and no comment is mentioned by the auditor about its allowability as the same is not sought from the auditor. Therefore this adjustment is not permissible as per point no. iv. In case of point no. ii, the disallowance must be apparent from the information in the return. So far as disallowance of any expenditure is concerned, apparent means one which is clearly admissible as per provisions of law as supported by judicial pronouncements. As the judicial pronouncement, this expenditure is in favour of the assessee as per jurisdictional High Court and hence such adjustment is not

permissible. Therefore under both the above said points, such adjustment as done by CPC is not permissible and therefore the action of the CPC is illegal and unjustified and deserves to be quashed.

7. It was submitted that proceedings u/s 143(1)(a) are akin to proceedings u/s 154 of the Income Tax Act, 1961. This fact is verifiable from circular no. 581 dated 28.09.1990 issued by CBDT wherein it was stated that disallowance of deductions claimed u/s 43B of the Income Tax Act, 1961 while processing the return in view of non submission of proof of payment were not amenable for rectification u/s 154 and it was held that subsequent furnishing of proof of payment prior to date of furnishing ITR could not have rectified the action taken u/s 143(1)(a). However immediately a clarification was issued by the Board wherein the above version was reversed and it was stated that if the assessee furnishes proof of payment subsequent to order u/s 143(1)(a), action u/s 154 can be taken. This shows that CBDT also considers the proceedings u/s 154 and u/s 143(1)(a) as one and same thing. It was submitted that the rectification proceedings u/s 154 cannot be taken in debatable issues as held by a large number of judicial rulings. Since the matter of allowance of employees contribution to welfare funds is highly debatable issue and hence such disallowance could not have been made u/s 143(1)(a) while processing the return u/s 143(1)(a). There are various High Courts including the jurisdictional High Court of Rajasthan wherein it has been held that employees contribution to welfare payment is allowable deduction if deposited prior to prescribed date of filing ITR u/s 139(1) whereas there are certain High Courts including Gujarat High Court who have held such sums to be not deductible if deposited after the prescribed date under respective statute. Therefore

the action of disallowing such amounts while processing the return is not accordance with law and requires to be reversed.

8. In ground No. 3, the assessee has challenged the sustenance the disallowance made by AO for Rs. 1,61,099/-. It was submitted that the Id. CIT (A) has relied on the case of Hon'ble Madras, Gujarat and Kerala High Court for sustaining the disallowance made by the CPC while processing the return. The Ld. CIT (A) forgot to take into consideration the reply filed by the assessee on the communication issued by CPC for making the disallowance on account of employees contribution to welfare funds. In the reply filed by the assessee, the assessee had mentioned about the binding judgments of the Hon'ble Rajasthan High Court in the case of CIT v/s Udaipur Dugdh Utpadak Sahkari Sangh and CIT v/s SBBJ . The approach so adopted by the Id. CIT (A) is against the law and unjustified.

9. It was submitted that recently, a similar matter came before the Hon'ble ITAT, Agra Bench in the case of Mahadev Cold Storage v/s AO, Aligarh (*ITA No. 41 & 42/Agr/2021 dated 14.06.2021*) wherein also the issue was exactly similar that the AO while processing the return made disallowance of contribution received from employees which was deposited lately than prescribed dates in respective statute but deposited prior to the scheduled date of filing return u/s 139(1). The matter was carried in appeal before the Id. CIT (A) who in faceless proceedings sustained the action of the AO relying on the judgment of the Hon'ble Gujarat High Court in the case of State Road Transport Corporation - 366 ITR 170 and ignoring the decision of the jurisdictional High Court of Allahabad rendered in the case of Sagan Foundry P Ltd.

v/s CIT (145 DTR 265). The Hon'ble ITAT, Agra Bench decided this issue in favour of the assessee and relevant findings reads as under:

"In the light of the above said discussion, Judgments of SC and HCs, we hold that NFAC is bound by the binding decision of the jurisdictional Allahabad High Court, as the assessing officer is situated within the territorial and subjective jurisdiction of High Court. Hence, we allow the appeal of the assessee by respectfully following the decision of jurisdictional High Court in the matter of Sagun Foundry P Ltd. v/s CIT (2017) (78 Taxmann 47)."

10. It was submitted that in the instant case, the Id. CIT (A) was bound to follow the binding judgment of the Hon'ble Rajasthan High Court and was supposed to allow the appeal of the assessee. On this issue, the assessee relies on judicial pronouncements of the Hon'ble Rajasthan High Court in case of CIT vs. SBBJ 363 ITR 70, CIT vs. Rajasthan State Beverages Corp. Ltd. 393 ITR 421 and PCIT vs. Rajasthan Renewable Energy Crop. Ltd. (DBIT Appeal No. 49/2019 dated 06.08.2019) wherein it has been held that contribution received from employees for welfare funds as per section 36(1)(va) is allowable as deduction if the assessee has deposited the sum so collected before due date of filing the return u/s 139(1) of the Income Tax Act, 1961. It was submitted that the above decisions of the Hon'ble jurisdictional High Court of Rajasthan clearly lays down the proposition that employees contribution to PF/ESI deposited lately than prescribed dates under respective statute but deposited prior to date u/s 139(1) is an allowable deduction.

11. Per contra, the Id. DR objected to the raising of the additional ground of appeal and it was submitted that the assessee has failed to raise the same before the Id CIT(A) and hence, the same may not be entertained at this stage of the appellate proceedings. It was further submitted that there has been a delay in deposit of employees contribution towards PF and ESI by the assessee and as the same has not been deposited within the stipulated time frame as prescribed by the relevant statute, the same has been rightly disallowed in terms of section 36(1)(va) while processing the return of income u/s 143(1) and has been rightly confirmed by the Id CIT(A) following the decision of the Hon'ble Madras, Gujarat and Kerala High Courts. The Id DR has thus relied on the findings of the lower authorities.

12. We have heard the rival contentions and perused the material available on record. On perusal of the audit report submitted by the assessee as part of his return of income, it is noted that the assessee has deposited the employees's contribution towards ESI and PF well before the due date of filing of return of income u/s 139(1) and the last of such deposits were made on 11.08.2018 whereas due date of filing the return for the impugned assessment year 2019-20 was 31.10.2019 and the return of income was actually filed on 23.10.2019. Admittedly and undisputedly, the employees's contribution to ESI and PF which have been collected by the assessee from its employees have thus been deposited well before the due date of filing of return of income u/s 139(1) of the Act. The issue is no more *res integra* in light of series of decisions rendered by the Hon'ble Rajasthan High Court starting from CIT vs. State Bank of Bikaner & Jaipur (supra) and subsequent decisions.

13. In this regard, we may refer to the initial decision of Hon'ble Rajasthan High Court in case of CIT vs. State Bank of Bikaner & Jaipur wherein the Hon'ble High Court after extensively examining the matter and considering the various decisions of the Hon'ble Supreme Court and various other High Courts has decided the matter in favour of the assessee. In the said decision, the Hon'ble High Court was pleased to held as under:

"20. On perusal of Sec.36(1)(va) and Sec.43(B)(b) and analyzing the judgments rendered, in our view as well, it is clear that the legislature brought in the statute Section 43(B)(b) to curb the activities of such tax payers who did not discharge their statutory liability of payment of dues, as aforesaid; and rightly so as on the one hand claim was being made under Section 36 for allowing the deduction of GPF, CPF, ESI etc. as per the system followed by the assesseees in claiming the deduction i.e. accrual basis and the same was being allowed, as the liability did exist but the said amount though claimed as a deduction was not being deposited even after lapse of several years. Therefore, to put a check on the said claims/deductions having been made, the said provision was brought in to curb the said activities and which was approved by the Hon'ble Apex Court in the case of Allied Motors (P) Ltd. (supra).

21. A conjoint reading of the proviso to Section 43-B which was inserted by the Finance Act, 1987 made effective from 01/04/1988, the words numbered as clause (a), (c), (d), (e) and (f), are omitted from the above proviso and, further more second

proviso was removed by Finance Act, 2003 therefore, the deduction towards the employer's contribution, if paid, prior to due date of filing of return can be claimed by the assessee. In our view, the explanation appended to Section 36(1)(va) of the Act further envisage that the amount actually paid by the assessee on or before the due date admissible at the time of submitting return of the income under Section 139 of the Act in respect of the previous year can be claimed by the assessee for deduction out of their gross total income. It is also clear that Sec.43B starts with a notwithstanding clause & would thus override Sec.36(1) (va) and if read in isolation Sec. 43B would become obsolete. Accordingly, contention of counsel for the revenue is not tenable for the reason aforesaid that deductions out of the gross income for payment of tax at the time of submission of return under Section 139 is permissible only if the statutory liability of payment of PF or other contribution referred to in Clause (b) are paid within the due date under the respective enactments by the assessees and not under the due date of filing of return.

22. We have already observed that till this provision was brought in as the due amounts on one pretext or the other were not being deposited by the assessees though substantial benefits had been obtained by them in the shape of the amount having been claimed as a deduction but the said amounts were not deposited. It is pertinent to note that the respective Act such as PF etc. also provides that the amounts can be paid later on subject to payment of interest and other consequences and to get benefit under the Income Tax Act, an assessee ought to have actually

deposited the entire amount as also to adduce evidence regarding such deposit on or before the return of income under sub-section (1) of Section 139 of the IT Act.

23. Thus, we are of the view that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act but before filing of the return of income under Section 139(1), cannot be disallowed under Section 43B or under Section 36(1)(va) of the IT Act."

14. The said decision has subsequently been followed in CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307, CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 366 ITR 163, CIT vs Rajasthan State Beverages Corportation Limited (supra) and PCIT vs Rajasthan Renewable Energy Corporation Ltd. In all these decisions, it has been consistently held that where the PF and ESI dues are paid after the due date under the respective statues but before filing of the return of income under section 139(1), the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act.

15. We further note that though the Id. CIT(A) has not disputed the various decisions of Hon'ble Rajasthan High Court and various other High Courts including Hon'ble Delhi High Court in case of CIT vs AIMIL Ltd 321 ITR 508 which were brought to his notice by the Id AR during the course of appellate proceedings but has decided to follow the decisions rendered by the Hon'ble Madras, Gujarat and Kerala High Courts. Given the divergent views taken by the various High Courts and in the instant case, the fact that the jurisdiction over the Assessing officer lies with the Hon'ble Rajasthan High Court, in our considered

view, the Id CIT(A) ought to have considered and followed the decision of the jurisdictional Rajasthan High Court, as evident from series of decisions referred supra, as the same is binding on all the appellate authorities as well as the Assessing officer under its jurisdiction in the State of Rajasthan.

16. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the addition by way of adjustment while processing the return of income u/s 143(1) amounting to Rs 1,61,099/- so made by the CPC towards the delayed deposit of the employees's contribution towards ESI and PF though paid well before the due date of filing of return of income u/s 139(1) of the Act is hereby directed to be deleted as the same cannot be disallowed under section 43B read with section 36(1)(va) of the Act in view of the binding decision of the Hon'ble Rajasthan High Court.

17. Given that we have adjudicated on the merits of the case whereby we have directed to delete the addition so made, the other ground of appeal relating to adjustment while processing the return of income and issue of intimation u/s 143(1) by CPC has become academic in nature and we donot deem it necessary to adjudicate the same.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 16/08/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16/08/2021.

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sohan Lal Tambi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 40/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar