

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No.184/Ind/2021
Assessment Year: 2017-18**

M/s. Prestige Fabricators Pvt. Ltd., vs. ACIT – 4(1), Indore.
31, Jaora Compound,
Indore – 452 001.
[PAN – AAACP 9924 D]
(Appellant) (Respondent)

Appellant by : Shri Ashish Goyal &
Shri N.D. Patwa, ARs
Respondent by : Shri R.P. Maurya, Sr. D.R.

Date of hearing : 24.02.2022
Date of pronouncement : 30.03.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 03.09.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The grounds of appeal raised by the assessee are as under :

On the facts and the circumstances of the case:-

- “1. *The Id. CIT(A), NFAC was not justified in confirming the enhancement of returned income in the intimation u/s. 143(1) by adjusting and Disallowing:-*
- a) *Employer's and Employee's contribution to State Insurance Corporation and Provident Fund aggregating to Rs.3,79,350/-which was not paid before the due date but paid before the due date of filing of return of income u/s.139 of the Income Tax Act, 1961.*

- b) *The interest aggregating to Rs.1,93,532/- paid during the year but pertains to A.Y. 2013-14 and 2014-15. Details as tabulated:-*

<i>Sr. No</i>	<i>Particulars</i>	<i>A.Y. 2013-14</i>	<i>A.Y. 2014-15</i>
<i>1.</i>	<i>Interest on VAT</i>	<i>83,768</i>	<i>19,600</i>
<i>2.</i>	<i>Interest on CST</i>	<i>20,133</i>	<i>42,888</i>
<i>3.</i>	<i>Interest on ET</i>	<i>11,153</i>	<i>15,990</i>
Total	1,93,532/-	1,15,054	78,478

- 2. The Id. CIT(A), NFAC was not justified in adding Rs.4,95,540/- paid towards the rate difference in LPG Cylinder being debited in past years expenses but determined and ascertained during F.Y. 2016-17.*
- 3. That the Id CIT(A), NFAC was not justified in dismissing the appeal filed against order u/s .143(1)(a) without considering the explanation offered by the appellant.*
- 4. That the Id. CIT(A), NFAC was not justified in rejecting the condonation application filed for delay in filing Form 35 without considering the explanation offered by the appellant.*
- 5. The appellant prays for the relief.*
- 6. Without prejudice to the above the additions made are excessive.”*

3. The assessee carries on business of manufacturing of LPG gas cylinder. During the year under consideration, the order of Value Added Tax, Central Sales Tax, Entry Tax have been received pertaining to F.Y. 2013-14 and 2014-15 and demand on account of interest on VAT, CST, and Entry Tax were raised for the respective years at Rs. 1,15,054/- for A.Y. 2013-14 and Rs. 78,478/- for A.Y. 2014-15 (aggregating total interest at Rs. 1,93,532). The DCIT, CPC adjusted and enhanced the returned income. The penalty levied by the respective authority under these statutory acts have been disallowed and agreed by the assessee and the same were paid by the assessee. The DCIT, CPC also disallowed contribution made by employees of Employees State Insurance Corporation and Provident Fund of Rs. 3,79,350/- for the Financial Year 2016-17.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) has dismissed the appeal of the assessee on the ground that there was delay in filing the appeal before the CIT(A) as there was no affidavit filed by the assessee to explain the reason of the delay in filing the appeal. Therefore, the Ld. AR further submitted that the issue in the present assessment is related to upholding addition of Rs.3,79,350/- under Section 36(1)(va) of the Act in respect of delay in payments of Employee's as well as employer's contribution of Provident Fund/Employees' State Insurance. The Ld. A.R. submitted that the Centralized Processing Centre (CPC) has made the said addition without appreciating that the same was deposited within the time available to the assessee under Section 43B of the Act i.e. before filing the return of income. The Ld. A.R. further submitted that the assessee claimed the benefit of Section as the issue is covered in favour of the assessee by the various decisions of the Hon'ble High Courts across the country most specifically that of the decision of Hon'ble Delhi High Court in the case of AIMIL Limited (2010) 321 ITR 508. The Ld. A.R. further relied upon the following decisions wherein it is held that in case of debatable issues, the assessee will get the benefit of the decisions which are in the favour of assessee:

- * Bajaj Auto Finance Limited vs. CIT (2018), 93 Taxmann.com 63 (Bom.HC)
- * CIT vs. Nagarjuna Fertilizers and Chemicals Limited (2015) 232 Taxmann 349 (Andhra Pradesh HC)
- * DCIT vs. Raghuvir Synthetics Limited in Appeal No.333 of 2004 (Guj. HC)
- * Kamal Textiles vs. ITO (1991) 59 Taxmann 555 (M.P. HC)

As regards the employer's contribution, the Ld. AR submitted that the same is an allowable claim as held in case of CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416 & CIT v. Vinay Cement Ltd. [2007] 213 CTR 268 (SC) by the Hon'ble Apex Court.

6. As regards to Ground No. 2, the Ld. AR submitted that the CIT(A) was not justified in adding Rs. 4,95,540/- paid towards the rate difference in LPG Cylinder being debited in past years expenses but determined and ascertained during the F.Y. 2016-17.

7. The Ld. DR relied upon the order of the CIT (A).

8. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that there was delay in filing appeal before the CIT(A) and no affidavit for explaining the delay was filed by the assessee before the CIT(A). But the submissions which were submitted before the CIT(A) and quoted on para 4 of the order of the CIT(A), the assessee has given the explanation for the delay in filing the appeal. From the perusal of order it cannot be seen that the CIT(A) called for the affidavit of the assessee for explaining the delay. Since the assessee has not followed the proper procedure before the CIT(A), therefore, it will be appropriate to remand back the issue to the file of the CIT(A). We further direct the assessee to file the proper condonation of delay application along with the affidavit explaining the delay therein. Thereafter, the CIT(A) should decide the case on merit as well taking cognizance of the submissions of the assessee as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, the appeal of the assessee is partly allowed for statistical purpose.

9. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 30th day of March, 2022.

Sd/-
(BHAGIRATH MAL BIYANI)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Indore, the 30th day of March, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore