

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 2136/Mum/2021 (A.Y. 2017-18)

M/s. Steel Fab Engineers A/601, 6 th Floor Rahul Towers, Dr. R.P. Road, Mulund West Mumbai-400 080. PAN : AAASF6145E (Appellant)	Vs.	ITO-26(3)(7) 418, 4 th Floor Kautilya Bhavan Bandra Kurla Complex, Bandra East, Mumbai 400 051. (Respondent)
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Assessee by	Shri Devendra Jain
Department by	Shri Kanhiya Lal Kanak
Date of Hearing	18.05.2022
Date of Pronouncement	21.06.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 27.09.2021 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of claim of PF and ESI payments.

2. The facts relating to this issue are that the AO noticed that the assessee had disallowed employees contribution of PF and ESI amounting to Rs.67,971/- and Rs.17,215/- respectively. The AO further noticed that the assessee had claimed a sum of Rs.1,97,183/- and Rs.44,984/- towards contribution to PF and ESI respectively in its profit and loss account. The AO took the view that the disallowance made by the assessee was not sufficient. Accordingly, he disallowed the remaining amount of PF contribution of Rs.1,29,212/- (Rs.1,97,183/- less Rs.67,971/-) and ESI contribution of

Rs.27,769/- (Rs.44,984/- less Rs.17,215/-). The Ld CIT(A) also confirmed the same.

3. The submission of Ld A.R is that the tax authorities have misunderstood factual aspects. With regard to the PF disallowance, he submitted that

(a) PF contribution of Rs.1,97,183/- claimed by the assessee pertains to the earlier assessment years, i.e., a sum of Rs.1,04,478/- relates to employers contribution pertaining to AY 2016-17 and the remaining amount of Rs.92,705/- pertains to earlier years. Both these amounts have been paid during the year under consideration and hence the same is required to be allowed as deduction u/s 43B of the Act.

(b) The AO has allowed set off of Rs.67,971/- while making disallowance. He submitted that this sum of Rs.67,971/- pertains to employees contribution and the assessee has voluntarily disallowed the same u/s 36(1)(va) of the Act. Hence set off given by AO is also not correct.

(c) Accordingly he submitted that the disallowance made by the AO on account of PF contribution is allowable as deduction u/s 43B of the Act.

4. With regard to ESI contribution, the Ld A.R submitted that

(a) the ESI contribution of Rs.44,984/- has been paid before the due date for filing return of income and hence there is no requirement of making any disallowance.

(b) the AO amount of Rs.17,215/-, which was given set off by the AO, actually pertains to employees contribution and the same has been voluntarily disallowed by the assessee u/s 36(1)(va) of the Act. Hence the set off given by the AO is not correct.

(c) Accordingly, he submitted that the amount of Rs.44,984/- should not be disallowed, as the same has been paid before the due date for filing return of income u/s 139(1) of the Act.

5. We heard Ld D.R and perused the record. As submitted Ld A.R, we notice that the tax authorities have not properly understood the nature of claim made by the assessee. As submitted by Ld A.R, the set off given by AO in respect of PF and ESI claim is not correct, since the claim made by the assessee pertains to employers contribution and the amount voluntarily added by the assessee pertains to employees contribution. Hence, we need to adjudicate the issue

considering the gross amount of Rs.1,97,813/- pertaining to PF contribution and Rs.44,984/- pertaining to ESI contribution.

6. The assessee has furnished details of payment of ESI contribution in Annexure E of Tax audit report and the same is placed at page 31 of the paper book filed by the assessee. On a perusal of the same, we notice that all the payments have been made prior to 30-09-2017, being the due date prescribed for filing return of income for AY 2017-18. Accordingly, following the decision rendered by Hon'ble Bombay High Court in the case of Ghatge Patil Transport Ltd. (368 ITR 749), we direct the AO to delete the disallowance relating to ESI contribution.

7. With regard to disallowance of PF contribution, it is the submission of the assessee, the same is required to be allowed u/s 43B of the Act on the basis of actual payment. In our view, this aspect requires verification at the end of AO in order to verify the claim of the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining the claim of the assessee in accordance with law, after affording adequate opportunity of being heard.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 21.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/06/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai