

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.29/CTK/2022

(निर्धारण वर्ष / Assessment Year :2019-2020)

B.B.Kar,
F-4, Civil Township, Rourkela
PAN No.AAEFB 9122 C

Versus

.....Assessee

ITO, Ward-1, Rourkela

.....Revenue

Shri Sandeep Kumar Jena, Advocate for the assessee
Shri S.C.Mohanty, Sr. DR for the Revenue

Date of Hearing : 23/08/2022
Date of Pronouncement : 23/08/2022

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 28.09.2021 for the assessment year 2019-2020.

2. At the outset, we found that the appeal of the assessee is barred by 12 days. In this regard, the assessee has filed an application along with affidavit stating reasons for condonation of delay, to which Id.DR did not object. Thus, we condone the delay of 12 days in filing the present appeal and the appeal is heard finally.

3. The only issue in this appeal is the confirmation of disallowance u/s.43B of the Act in respect of the delay in payment of PF & ESI under the respective Acts but paid before the due date of filing of the return. It was the submission by the Id.AR that the assessee had filed return of income on 25.10.2019. The return came to be processed u/s.143(1) of the Act on 06.03.2020, wherein the delayed payment in respect of the PF & ESI had been disallowed. It was the submission that the disallowance has been made holding that there has been an amendment to Section 36(1)(va) by the Finance Act, 2021. It was the submission that on appeal the Id.CIT(A) has also confirmed the disallowance. It was also the submission that the amendment to Section 36(1)(va) of the Act was prospective in nature as has been held by the Delhi Bench of the Tribunal in ITA No.5204/Del/2017 in the case of T.V.Today Network Ltd. order dated 27.07.2022. It was the submission that the disallowance is not permissible in an intimation u/s.143(1) of the Act insofar as the amendment is prospective in nature. The issue becomes a debatable issue.

4. In reply, Id. Sr. DR vehemently supported the orders of the AO and CIT(A).

5. We have considered rival submissions. As it is noticed that the Hon'ble Delhi High Court in the case of TV Today Network Ltd., in ITA No.227 of 2022, vide judgment dated 29.07.2021 has categorically held that the amendment to section 36(1)(va) by the Finance Act, 2021 is to operate prospectively. In the present case it is noticed that the issue is

with regard to allowability of PF and ESIC paid beyond the prescribed date but within the due date of filing of return, therefore, the same is allowable. This issue has also been decided by this Bench of the Tribunal in ITA No.140/CTK/2021, Odyssey Motors Pvt. Ltd., order dated 17.08.2022, in favour of the assessee. In view of the above, we are of the opinion that the view as taken by the AO and Id CIT(A) is erroneous and same stands reversed.

6. In the result, appeal of the assessee stands allowed.

Order dictated and pronounced in the open court on 23/08/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 23/08/2022

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
B.B.Kar,
F-4, Civil Township, Rourkela
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Rourkela
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack