

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 61/MUM/2022
(ASSESSMENT YEAR: 2018-19)

The Malad Sahakari Bank Limited,
6, Sujata Niketan, Rani Sati Marg,
Malad (East), Mumbai - 400097
[PAN: AAAAT0320R]

..... Appellant

Vs

National Faceless Appeal Centre,
Delhi

..... Respondent

Appearances

For the Appellant/Assessee : Shri Ms. Tejasvi Patil
For the Respondent/Department : Shri B.K. Bagchi

Date of conclusion of hearing : 12.05.2022
Date of pronouncement of order : 04.08.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 12.11.2021 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the CIT(A) had partly allowed the appeal filed by the Appellant/Assessee against the order, dated 24.02.2020 passed under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') .
2. The Appellant, a co-operative society engaged in the business of banking, filed its return of income on 31.10.2018, declaring total income of INR 5,33,12,193/-. The Appellant received communication,

dated 12.02.2019, under Section 143(1)(a) of the Act wherein it was proposed to, inter alia, make adjustment to the returned income by disallowing INR 3,60,252/- under 36(1)(va) of the Act. In response to the said communication, the Appellant filed reply on 28.02.2019 submitting that the amount of INR 3,60,252/- represented employee contribution to the Provident Fund deposited before the due date of filing on income-tax return and based on the various judicial pronouncements, the same is allowable as business deduction. However, the submissions of the Appellant were rejected as the Appellant received intimation order, dated 01.10.2019 under section 143(1) of the Act wherein the income of the Appellant was computed at INR 5,43,41,690/- by making, inter alia, disallowance of INR 3,60,252/- under Section 36(1)(va) of the Act and a disallowance of INR 6,69,247/- under Section 43B of the Act.

3. The Appellant filed application for rectification under Section 154 of the Act which was rejected by the Assessing Officer vide order, dated 24.02.2020, holding that disallowance made by the CPC was not a mistakes apparent from the records
4. Being aggrieved, the Appellant filed appeal before CIT(A). The CIT(A) deleted the addition of INR 6,69,247/- made by the Assessing Officer under Section 43B of the Act. However, the CIT(A) declined to grant any relief to the Assessee as regards disallowance of INR 3,60,252/- under Section 36(1)(va) of the Act holding as under:

“55. In view of the same, with due respect, the reliance of the appellant on ratios of various judgments relied upon by the Appellant, is not accepted.

56. It is therefore, held that the disallowance of Rs. 3,60,252/- was made under Section 36(1)(va) made u/s. 143(1) by CPC on account of appellant's failure to pay the employee's contribution of PF within the prescribed due dates as per section 36(1)(va) is strictly in accordance with law and clearly comes under the

prima facie adjustments as envisaged u/s. 143(1)(a)(iv). The order under Section 143(1) issued by AO CPC is therefore, confirmed on the disallowances made of Rs. 3,60,252/-."

5. The Ld. Authorised Representative for the Appellant appearing before us submitted that the addition of INR 3,60,252/- under Section 36(1)(va) of the Act has been made without appreciating that the employee's contribution to PF was deposited before the due date of filing return and was allowable as deduction under Section 36(1)(va) read with Section 43B of the Act as per the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Organics Chemicals Ltd. [2014] 366 ITR 1 (Bombay). Further, the Tribunal has in number of decisions held that the amendments introduced by the Finance Act, 2021 are applicable for Assessment Year 2021-22, and therefore, the CIT(A) has erred in confirming the disallowance by placing reliance on the same. On the basis of the aforesaid, He submitted that the assessing authority was incorrect and rejecting the rectification application filed by the Assessee holding that the additions made to the returned income while processing returned under Section 143(1) of the Act did not constitute a mistake apparent on record.
6. The Ld. Departmental Representative relied upon the order dated 24.02.2020 passed under Section 154 of the Act and the order of CIT(A) dated 12.11.2021. He further submitted that the amendments to Section 36(l)(va) made vide Finance Act 2021 are to be applied retrospectively, as the same are curative/declaratory in nature and therefore, the order passed by CIT(A) on this issue does not call for any interference.
7. We have considered the rival submissions and perused the material available on record. It is not in dispute that Appellant had deposited the employees' contribution of PF before the due date of filing of Return under Section 139(1) of the Act, though the same were

deposited belatedly beyond the due date specified under the respective statutes. The CIT(A) has sought to justify the additions/adjustments made under Section 143(1) of the Act vide order/intimation dated 07.01.2021 by placing reliance upon the amendments introduced by the Finance Act, 2021 which was passed much later on 28.03.2021 by contending that the amendments are to be interpreted as being clarificatory in nature and therefore, applicable retrospectively. We note that the date on which intimation/order under Section 143(1) of the Act was passed the issue stood decided in the favour of the Appellant by virtue of the judgment of the jurisdictional High Court in the case of CIT vs. Ghatge Patil Transporters Ltd. (2015) 53 taxmann.com 141 (Bom HC) and CIT vs. Hindustan Organics Chemicals Ltd. [2014] 366 ITR 1 (Bombay). Further, even after the introduction of amendments to Section 36(1)(va)/43B of the Act by way of Finance Act, 2021, Hyderabad Bench of the Tribunal had, vide order dated 15.06.2021, in the case of Salzgitter Hydraulics (P.) Ltd. vs ITO, Ward 3(1), Hyderabad: 189 ITD 676 (Hyderabad - Trib.) held that the aforesaid amendments are applicable from Assessment Year 2021-2022. Further, the adjustments/additions in respect of employees contribution to PF fell outside the scope of Section 143(1)(a)(iv) of the Act. Section 143(1)(a)(iv) provides for adjustment in the return of income filed by an assessee in case a disallowance of expenditure is indicated in the audit report but had not taken into account in computing the total income in the return. A perusal of Form 3CD, the form prescribed for filing tax audit report, would show that the tax auditor is not just required to identify and provide details of disallowance of expenditure. Form 3CD also provides for disclosures of various information/details relating to an assessee such as the nature business/profession, books of accounts maintained etc. Further, not all clauses of Form 3CD require the tax auditor to express an opinion. Some of the clauses require the tax auditor to just provide information/details. Clause 20(b) of Form 3CD falls in this category.

The tax auditor is merely required to provide '*Details of contributions received from employees for various funds as referred to in section 36(1)(va)*'. This becomes clear on examining other clauses which specifically require the tax auditor to express an opinion, such as Clause 21(b) requiring disclosure of amounts inadmissible under Section 40(a) of the Act, Clause 21(d) requiring disclosure of amounts inadmissible under Section 40A(3) of the Act and Clause 21(e) requiring disclosure of amounts inadmissible under Section 40A(9) of the Act. Since Clause 20(b) of Form 3CD does not require any expression of opinion on the part of tax auditor, it cannot, in our opinion, be said that disclosure made by tax auditor in the aforesaid clause constitutes a '*disallowance of expenditure indicated in the audit report*' triggering the provisions of Section 143(1)(a)(iv) of the Act. In any case the issue stands decided in favour of the Assessee by the decision of Mumbai Bench of the Tribunal in the case of Kalpesh Synthetics Pvt. Ltd., vs. DCIT, CPC, Bangalore: 137 taxmann.com 475. In view of the aforesaid, the adjustment of INR 3,60,252/- made while processing return under Section 143(1) of the Act, ex-facie, constituted a mistake apparent on record. We are of the view that the assessing authority erred in rejected the rectification application filed under Section 154 of the Act holding that the adjustments made while processing return under Section 143(1) of the Act did not constitute a mistake apparent on record. If the stand of the assessing authority is to be accepted then the adjustment under consideration could not have been made in the first place.

8. In view of the above, Ground No. 1 raised by the Appellant in the present appeal are allowed and addition/disallowance of INR 3,60,252/- made under Section 36(1)(va) of the Act pertaining to deposit of employees' contribution to PF after the due date specified in the applicable statute but before the due date of filing income tax return prescribed under Section 139(1) of the Act stands deleted. In view of the aforesaid, Ground No. 2 and 3 raised by the Appellant is disposed off as being infructuous.

9. In the result, the present appeal is allowed for statistical purposes.

Order pronounced on 04.08.2022.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.08.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai