

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.121/Ind/2021
Assessment Year: 2015-16

M/s. M.P. State Cooperative Marketing Federation Ltd. Bhopal	<u>बनाम /</u> Vs.	Pr. CIT-1, Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AABAT4628H		
Assessee by	Shri Anil Khabya, AR	
Revenue by	None	
Date of Hearing	25.08.2022	
Date of Pronouncement	30.08.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal by assessee is directed against the order dated 18.03.2021 by Pr. Commissioner of Income Tax-1 Bhopal [**“Ld. PCIT(A)”**], u/s 263 of the Income-tax Act, 1961 [**“the Act”**] which in turn arises out of order of assessment dated 26.12.2017 passed by Ld. ACIT, Circle-2(1) Bhopal [**“Ld. AO”**] u/s 143(3) of the act for Assessment Year 2015-16, on the following grounds:

“1. That the Ld. Pr. CIT(A) erred in invoking provisions of section 263

and setting aside order of assessment dt. 26.12.2017 for framing fresh assessment.

2. That the Ld. CIT(A) erred in holding that the order of assessment passed by the Assessing Officer was erroneous and prejudicial to interest of revenue when it was explained to CIT that the entire payment of Employee Contribution of EPF was made within due date specified in relevant Act and period expenses accrued during the year.”

2. This appeal is required to be argued by CIT-DR from revenue side, but when the matter was called for hearing, none appeared on behalf of revenue. It is observed that the revenue has been seeking regular adjournments. Vide 1st letter dated 12.08.2022, adjournments have been sought for cases fixed on 16.08.2022 to 18.08.2022 on medical-ground of Ld. CIT-DR. Thereafter, vide 2nd letter dated 18.08.2022 (accompanied by a certificate of Dr. Manish Nema), adjournments have been sought for cases fixed on 22.08.2022 to 23.08.2022 on medical-ground. Again vide 3rd letter dated 23.08.2022, adjournments have been sought for the cases fixed on 24.08.2022 to 25.08.2022 on medical-ground and in the same letter it is also mentioned that the charge had been given to a different CIT-DR, but interestingly it is also mentioned that the new CIT-DR is attending training at IIM, Ahmedabad and therefore unable to represent. It is also observed that in the 2nd letter dated 18.08.2022 and 3rd letter dated 23.08.2022, although request has been made to grant adjournments in “following cases” or “cases as per list” but no details of cases for which adjournments were required is actually furnished. The revenue has not taken care to make a suitable arrangement to represent its cases. Initially for a few days, the ITAT has allowed adjournment-requests but thereafter it was not possible to entertain such requests any more due to discomfort to the litigants and their counsels. Therefore, the adjournment-request of revenue is not accepted in this appeal. We proceed to dispose of the appeal after hearing the Ld. AR and material available on record.

3. The registry has informed that the present appeal was required to be filed by 18.05.2021 but the same has been filed on 16.6.2021 after a delay of 29 days. Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submissions of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

4. The brief facts are such that the original assessment was completed by Ld. AO vide assessment-order dated 26.12.2017 u/s 143(3) of the Act. Subsequently, Ld. PCIT examined the records of proceeding conducted by Ld. AO and found the assessment-order as erroneous in so far it is prejudicial to the interest of revenue on two grounds, viz. (i) the Ld. AO has wrongly allowed deduction of Rs. 353.04 lacs of employees-contribution to EPF not paid upto the due date under the governing law, hence not allowable as deduction u/s 36(1)(va), and (ii) Ld. AO has wrongly allowed deduction of prior-period expenses of Rs. 10,99,173/- which was not allowable u/s 37(1) of the act. Accordingly, Ld. PCIT took action u/s 263 of the Act through notice dated 01.03.2021.

5. During proceeding before Ld. PCIT, the assessee made a detailed submission vide letter dated 15.03.2021 to demonstrate that the assessment-order is neither erroneous nor prejudicial to the interest of revenue. However, the Ld. PCIT was not satisfied with the submission of assessee and passed revision-order on 18.03.2021 whereby she has set aside the assessment-order with a direction to Ld. AO to make a *de novo* assessment.

6. Aggrieved by order of revision, the assessee has filed this appeal and now before us.

7. During hearing before us, the Ld. AR made a detailed submission to demonstrate how there is no error in the assessment-order and no prejudice is caused to the interest of revenue. The contentions made by Ld. AR are discussed below:

(i) Regarding employee's contribution to EPF, Ld. AR carried us to Page No. 5 of the Paper-Book where a complete chart showing monthwise amounts of contribution, due dates of deposit (inclusive of 5 grace-days), and actual dates of payments are mentioned. Ld. AR submitted that this chart was filed to Ld. PCIT. Ld. AR submitted that on a perusal of chart, it can be easily observed that the assessee has paid all contributions within the due date permissible under the EPF law. Ld. AR pointed out that the due dates of payments have been taken as inclusive of 5 grace-days permissible till February, 2016 under the EPF law and therefore the payments were made within the time allowed under EPF law. According to Ld. AR, since the assessee has made payments within the due dates prescribed in the EPF laws, the Ld. AO has rightly allowed deduction u/s 36(1)(va). Ld. AR made one more submission that even otherwise, this Bench has already interpreted the legal provision of section 36(1)(va) read with section 43B and held in several orders that the employees' contribution of EPF paid after due date under the EPF law but upto the due date u/s 139(1) for filing of return are allowable as deduction. Ld. AR has also filed a copy of such order of this Bench in **ITA No. 151/Ind/2021 dated 08.04.2022 - GSD Constructions Indore Pvt. Ltd. Vs. DCIT / ACIT, Indore.**

(ii) Regarding prior-period expenses of Rs. 10,99,173/-, Ld. AR submitted that the assessee is a very big organization in the State of Bhopal engaged in co-operative marketing. Ld. AR submitted that the assessee follows mercantile method of accounting for maintenance of books of account as well as computation of taxable income. Ld. AR submitted that the books of account are duly auditors by statutory auditors and tax auditors. Ld. AR submitted that in the process of

finalizing its annual accounts, the assessee is making best possible estimation of expenses. But still due to the big nature of organization, exact estimation with 100% accuracy cannot be made and therefore the short-provision made in one year, has to be booked in next year on actual identification of exact amount at the time of payment of relevant expenditure. Ld. AR submitted that the differential amounts actually crystallize in subsequent year at the time of actual payment and have to be booked as expenditure in subsequent year only. Ld. AR submitted that this practice of assessee is year after year and always accepted by department also. Ld. AR submitted that this practice is not only adopted by the assessee but everywhere by all big corporates and organisations. Having explained these broader aspects of the issue involved, Ld. AR carried us to Page No. 7 of the Paper-Book where a chart showing the details of impugned prior-period expenses as filed to Ld. PCIT is placed. Drawing our attention to individual-items mentioned therein, Ld. AR pointed out that the subject-expenses are on account of short-provisions made in earlier years on account of rent, paddy expenses, rate difference, etc. Ld. AR also submitted that the assessee has recorded these expenses under the heading "prior-period expenses" but these expenses have crystallised in the current year in real sense. As a matter of fact, Ld. AR further submitted that the assessee has claimed deduction of these expenses in current year alone, no deduction was claimed in any earlier year and therefore there is no double deduction. Lastly, the Ld. AR also submitted that none of these expenses is disallowable under any provision of the act.

8. With aforesaid submissions, Ld. AR argued that the assessment-order was neither erroneous nor prejudicial to the interest of revenue. Hence the Ld. PCIT has wrongly set aside the assessment-order through revision-order passed u/s 263. Therefore, the revision-order deserves to be quashed.

9. We have considered the submission made by ld. AR and also perused the relevant material available on record to which our attention is invited as

well as the applicable legal provisions. Regarding the employees' contribution to EPF, we observe that the details of monthwise contributions submitted by assessee clearly demonstrate that the impugned contributions have been paid within the due dates (including grace-days of 5 days allowable till February, 2016 as pointed out by Ld. AR) prescribed under EPF law. Even otherwise, the Ld. AR has rightly pointed out that this Bench has consistently interpreted the legal position of section 36(1)(va) read with section 43B in several decisions and held that the employees' contributions to EPF paid after due date under the EPF law but upto due date u/s 139(1) for filing of return are allowable as deduction. Therefore, the Ld. AO has rightly allowed deduction as claimed by assessee. Regarding prior-period expenses of Rs.10,99,137/-, we have perused the details of expenses and found the same to be on account of short-provisions made in earlier years in respect of various expenses, rate difference, etc. We find merit in the submission of Ld. AR that the assessee is a big organization and despite of care being exercised in estimation, there is a scope of making short-provision, which as and when identified in subsequent year, are booked as expenditure and claimed as deduction. We also find merit in the argument that this practice is being followed year after year and hence no adverse inference should be taken. We are also convinced by the submissions of Ld. AR that the assessee has claimed deduction of the impugned expenses in current year only and not claimed deduction in any earlier year, hence no prejudice is cause to the interest of revenue there being no double deduction.

10. In view of above discussion, we find that on both of the counts as alleged by Ld. PCIT, neither there is any error in the assessment-order nor any prejudice is caused to the revenue. Therefore, the Ld. PCIT was not justified in treating the assessment-order as erroneous and prejudicial to the interest of revenue. Resultantly, the revision-order passed by Ld. PCIT u/s 263 does not meet the requirement of law and deserves to be set aside and we do so. In conclusion, we are quashing the order passed by Ld. PCIT u/s 263 of the Act.

11. In the result, this appeal of Assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 30/08/2022.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30.08.2022

Patel/Sr. PS

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

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	