आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.82/Chny/2021**
निर्धारण वर्ष /**Assessment Year: 2018-19**

M/s. Athenahealth Technology Pvt. Ltd., Module 3 and 4, 9th Floor S.P Infocity, Dr. MGR Road, Kandaanchanvadi, Perungudi, Chennai – 600 096. **[PAN: AAFCA-3257-P]**	**Vs.**	**The Dy. Commissioner of Income Tax**, Corporate Circle-1(1), Chennai.
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri Sumeet Khurana, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing	:	21.09.2022
घोषणा की तारीख /Date of Pronouncement	:	21.09.2022

आदेश / **O R D E R**

Per Mahavir Singh, Vice President :

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Chennai, in Appeal No.123/CIT(A)/2019-20 dated 07.09.2020. The Assessment was framed by Dy. Commissioner of Income Tax, Centralized Processing Center, Bengaluru for the relevant Assessment Year 2018-19 vide

intimation dated 24.11.2019 u/s. 143(1) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the A.O in disallowing the claim of deduction of ESI and PF claimed u/s. 36(1)(va) of the Act.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has remitted the employees contribution to PF and ESI amounting to Rs. 5,15,978/- after the due date as prescribed under the respective statutes i.e., Provident Fund Act and ESI Act. The A.O while processing return u/s. 143(1) of the Act made a disallowance. The CIT(A) also confirmed the disallowance. Aggrieved, the assessee is in further appeal before the Tribunal.

4. Admittedly, the assessee has made these payments before the due date of filing of return of income u/s. 139(1) of the Act, but after the due date as prescribed under the respective acts of Provident Fund and ESI Act. Once this is a factual position, the issue is covered by the decision of Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd. v. CIT in Civil Appeal No.2833/2016 dated 12.10.2022*, wherein it was held that the employees contribution of ESI and PF has to be remitted on or before the due date as prescribed

under the respective statutes and not after that for making a claim. Respectfully following the decision of Hon'ble Supreme Court, supra, we dismiss the claim of the assessee. This issue of assessee's appeal is dismissed.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the A.O in disallowing the inconsistency in total amount claimed u/s. 37 of the Act i.e., difference in reporting in ITR and claimed in Form No.3CD amounting to Rs. 8,24,846/-.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that as per clause 21(e) of the tax audit report i.e., (TAR) the total amount reported as disallowed u/s. 37 of the Act is Rs. 21,02,846/-, whereas the disallowance made by the assessee u/s. 37 of the Act in the return of income is Rs. 12,78,000/-. The assessee explained before us that the difference of Rs. 8,24,846/- has been added by the A.O while processing return of income u/s. 143(1) of the Act. The Ld. counsel for the assessee explained the entire particulars as under:

Particulars	*Financial statement reference*	*Amount (in INR)*	*Treatment in ITR*	*Disclosure in TAR*

Gratuity provision created in FY 2017-18 (disclosed as employee benefit expense in statement of profit and loss account)	*Note 19 in page No. 13 of financial statement, page No. 90 of the paperbook*	*9,626,816*	*Disallowed in ITR under SI, No. 9(c) (Refer page No. 30 of the ITR, page No. 30 of the paperbook) pertaining to disallowance of gratuity provision under section 40A(7)(a) of the Act*	*Disclosed under clause 21(e), page No. 6 of the TAR (refer page No. 101 of the paperbook) pertaining to disallowance of gratuity provision under section 40A(7)(a) of the Act*
Gratuity payment to employees made during FY 2017-18 (disclosed as benefit payments in Accounting Standard 15 - disclosures)	*Note 24 in page 16 of financial statements, page No, 93 of the paperbook*	*4,236,722*	*Considered as Allowable expenditure under section 40A(7)(b) of the Act.* *However, in absence of specific field for allowable expenditure under section 40A of the Act, the payment been treated as allowable deduction under SI. No 10(b) of ITR (Refer page No. 30 of the ITR, page No. 30 of the paper book) pertaining to deduction for contribution to any gratuity fund.*	*In absence of specific field for disclosure of deduction for Gratuity payment to Employees under section40A(7)(b) of the Act, no disclosure was made in TAR.*

7. It was explained before us that the assessee has already carried out the disallowance, but in the return the A.O has further disallowed interest on TDS, interest on income tax u/s. 37 of the Act instead of

disallowance made by assessee under s. 40(a)(ii) of the Act under clause 21(a) of the tax audit report. The Ld. counsel explained that there is no specific clause in tax report to report the amount to be considered for disallowance u/s. 40(a)(ii) of the Act. Even the Ld. counsel for the assessee stated that nothing has been disallowed while completing the scrutiny assessment u/s. 143(3) of the Act by the A.O vide order dated 27.08.2021, which is enclosed in assessee's paper book at Page Nos.77 to 79.

8. On the other hand, the Ld. Sr. A.R filed his objections, which are reproduced as it is as under:

> *"The counsel for the assessee has, during the hearing, projected a picture that the Departmental return processing system (CPC) has committed a grave error by not adhering to the law by carrying out un-wanted adjustments to the companies returned income while processing its return. Also the Commissioner of Income tax (Appeal) has also erred in upholding such actions of the CPC.*
>
> *The assessee failed to appreciate that Departmental return processing system (CPC) is a fully automated process with zero manual intervention based on the data furnished by the taxpayers through their digital return of income and tax audit reports.*
>
> *It failed to appreciate that if a wrong adjustments to the returned income has arisen, then the fault lies with the taxpayer in reporting its return data or tax audit particulars in the CBDT notified format.*
>
> *The assessee failed to appreciate the fact that in such scenario, it ought to have introspected and carried out a detailed Root Cause Analysis and resorted to the appropriate remedial actions as laid out under the Income Tax Act instead of casting allegation on the Departmental process and the appeal authorities.*
> *The right course of action under the law was to file a revised Audit report (with a fresh UDIN generated) or file a revised return u/s 139(5) of the Act, aligning its return data in line with the tax audit report findings. Even if the timelines for furnishing the revised return would have been over, at-least it could have filed a digital rectification*

application with modified return data format and waited for its results before casting allegations on the Departmental process for its faults in adhering to the disciplines of filing returns as per the notified format and prescribed validations.

The assessee has also questioned the legal validity of the Departmental system to carry out such adjustment u/s 143(l)(a)(ii) forgetting of the fact that under the law, the tax audit report is a sub-set of a return and any return without accompanied by the tax audit report is subject to be treated as invalid return u/s 139(9) of Income Tax Act-1961 read with Rule-12 of the Income Tax Rules-1962.

Hence, Department submits that such appeal should not be entertained and taxpayers made responsible and pay for their deeds of omissions and commissions. At the most, the assessee should have filed a mercy plea before the CBDT u/s 119(2)(b) accepting its mistake and seeking a relief instead of pointed out fingers on the Departmental applications and e-governance process implemented for betterment and ease of business of general law abiding public."

9. After hearing both the sides and going through the facts that the assessee has made a disallowance under the provisions of s. 37 of the Act, because there is no specific clause in tax audit report to report the amount to be considered for disallowance u/s. 40(a)(ii) of the Act. We find that there is some problem in the tax audit form or in the processing of return through CPC. But, in any case from the facts it is clear that these amounts are already disallowed by the assessee and nothing more is to be disallowed, because total disallowance practically comes to Rs. 21,02,846/- and for that purpose no separate disallowance u/s. 143(1) of the Act can be made for an amount of Rs. 8,24,846/-. We direct the A.O to allow the same. This issue of assessee's appeal is allowed.

10. The next issue in this appeal of assessee as regards to the order of CIT(A) confirming the action of the A.O in not considering the difference pertaining to payment made for gratuity to the employees which is of allowable expenditure as per Explanation 2 to s. 40A(7) of the Act.

11. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the CPC while processing the return u/s. 143(1) of the Act made disallowance of gratuity amounting to Rs. 42,36,722/- being inconsistency in amount disallowed u/s. 43B of the Act in processing previous year, but allowable during previous year. We noted that the assessee has claimed deduction for an amount of Rs. 42,36,722/- being payment made for gratuity to the employees during the year as per s. 40A(7) r/w s. 37 of the Act and the same was disclosed at Sr. No.10B of the ITR i.e., Page No.30 of ITR u/s. 43B of the Act in the absence of specific field for disclosure in the ITR. It was claimed that the payment made for gratuity during the A.Y 2017-18 was not disclosed in the tax audit report in the clause for reporting as per s. 43B of the Act. We are of the view that this position led to inconsistency in the column as per ITR and the tax audit report that the amount disallowed u/s. 43B of the Act in any preceding previous year, but allowable during the previous year.

The assessee also submitted that the additional evidence before us along with supporting documentary evidences i.e., extract from the books of accounts to further substantiate the following:

- *Entire provision made in the books towards gratuity benefits of employees is disallowed in the ITR filed by the company and:*
- *The Actual claims paid towards gratuity by LIC to the employees of the company is essentially claimed in the ITR as allowable deduction from total income.*

12. In view of the above, we are of the view that the deduction of gratuity is available in substantive law and it cannot be disallowed merely by the reference of inconsistent entries in explanation of s. 143(1)(a) of the Act being a procedural provisions, it shall not take away the right confirmed in s. 37 r/w s. 40A(7) and s. 36(1)(v) of the Act. We direct the A.O to delete this disallowance. This issue of assessee's appeal is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 21st September, 2022.

Sd/-	**Sd/-**
(जी. मंजुनाथ)	**(महावीर सिंह)**
(G. Manjunatha)	**(Mahavir Singh)**
लेखा सदस्य /Accountant Member	**उपाध्यक्ष / Vice President**

चेन्नई/Chennai, दिनांक/Dated: 21st September, 2022.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF