

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, NAGPUR

(Through Virtual Court)

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.103/NAG/2022
निर्धारण वर्ष / Assessment Year : 2018-19

M/s. Agrofab Machineries (India) Pvt. Ltd.,
W-119, 120, Hingana Road, M.I.D.C.,
Nagpur – 440028

PAN : AABCA5274E

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
CPC, Bangalore

.....प्रत्यर्थी / Respondent

Assessee by : N O N E

Revenue by : Shri G.J. Ninawe

सुनवाई की तारीख / Date of Hearing : 19-10-2022

घोषणा की तारीख / Date of Pronouncement : 25-10-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 31-03-2022 passed by the National Faceless Appeal Centre (“NFAC”), Delhi for assessment year 2018-19.

2. I find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent and set ex-parte. Therefore, I proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The only issue is to be decided is as to whether the CIT(A), NFAC, Delhi justified in confirming the addition made by the CPC u/s. 36(1)(va) of the Act.

4. Heard ld. DR and perused the material available on record. I note that the assessee is a private limited company engaged in manufacturing and selling of castings having business under the name and style as "M/s. Agrofab Machinerics (I) Private Limited. The assessee filed return of income on 30-10-2018. The CPC, Bangalore disallowed an amount of Rs.7,38,181/- for not depositing the employee's contribution of PF/ESI before prescribed due dates under the respective Act. Having aggrieved, the assessee preferred an appeal before the CIT(A). The assessee contended that the assessee is entitled to claim deduction if the employee's contribution is paid before due dates of filing return of income. The CIT(A) on an examination of Tax Audit Report held that the assessee did not deposit an amount of Rs.7,38,181/- which is employee's contribution towards PF/ESI before the due date under the respective Act and confirmed the disallowance made by the CPC, Bangalore. The ld. DR placed on record the decision of Hon'ble Supreme Court in batch of the appeals, lead case being Checkmate Services P. Ltd. in Civil Appeal No. 2833 of 2016 and submitted that the assessee is not entitled to claim deduction if the employee's contribution is not paid within due dates of respective statutes. On careful reading of the said decision of Hon'ble Supreme Court which held that Section 2(24)(x) deems amount received from the employees as income and the amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the employer (assessee). Further, it held unless the conditions spelt by Explanation to section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date of respective statutes, the assessee is not entitled to

claim benefit of deduction from the total income. Therefore, in my opinion, essential condition for claiming such deduction if such amounts are deposited on or before due date of respective statutes. It is evident from para 9 of the impugned order that the assessee deposited the employee's contribution to PF/ESI after the prescribed due date of relevant Act which is not disputed by the ld. AR. Therefore, following the decision of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra) I find no infirmity in the order of CIT(A), NFAC, Delhi in holding the assessee is not entitled to claim deduction for its failure to deposit employee's contribution before due date prescribed under the relevant statutes. Thus, the ground raised by the assessee is fails and it is dismissed.

5. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 25th October, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th October, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), NFAC, Delhi.
4. The CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, नागपुर / DR, ITAT, "SMC" Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune