

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.126/Del/2022
Assessment Year: 2018-19

Hitech Network India Pvt. Ltd., 105, Sector-10, 9-10 Dividing Road, Faridabad	Vs.	CIT(A), National Faceless Assessment Centre, CPC, Bengaluru
PAN :AADCH1537K		
(Appellant)		(Respondent)

Appellant by	Sh. S.K. Bansal, CA
Respondent by	Sh. Om Parkash, Sr. DR

Date of hearing	04.11.2022
Date of pronouncement	10.11.2022

ORDER

This is an appeal by the assessee against order dated 15.11.2021 passed by National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2018-19.

2. In ground nos. 2, 3 and 4, the assessee has challenged disallowance of Rs.5,67,266/- representing payment of employees' contribution to Provident Fund (PF) and Employee's State Insurance (ESI).

2.1 I have considered rival submissions and perused the materials on record. The issue arising for consideration is, whether employee's contribution to PF and ESI paid beyond the period prescribed under relevant Acts governing payment of PF and ESI, but before the due date of filing of return of income can be allowed as deduction under section 36(1)(va) read with section 43B of the Act. Recently, the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. CIT in judgment dated 12.10.2022 delivered in C.A. No.2830/2016 and Others has decided the issue in favour of the Revenue by holding that unless employee's contribution to PF and ESI are remitted to the Government account within the due date as provided under the relevant statutes, in terms with section 36(1)(va) of the Act, it has to be treated as income of the assessee as per section 2(24)(x) of the Act. Thus, respectfully following the aforesaid decision of the Hon'ble Apex Court, I uphold the disallowance. These grounds are dismissed.

3. In ground no. 5, the assessee has challenged disallowance of Rs.11,250/- under section 40(a)(ia) of the Act.

3.1 Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has paid an amount of

Rs.37,500/- towards professional fee without deducting tax at source. Accordingly, he disallowed the amount under section 40(a)(ia) of the Act. Learned Commissioner (Appeals) also sustained the disallowance.

3.2 Before me, learned counsel appearing for the assessee submitted that due to non-deduction of tax at source, the assessee itself has disallowed the expenditure in the computation of income filed along with return of income. He submitted, due to inadvertent mistake, the assessee has mentioned it as a disallowance under section 43B of the Act in the return of income. He submitted, in this context, he drew our attention to the computation of income as well as return of income placed in the paper-book. Thus, he submitted, since, already the amount has been disallowed, any further disallowance would amount to double disallowance of the same expenditure.

3.3 Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

3.4 I have considered rival submissions and perused the material on record. I find, in the computation of income accompanying return of income, a copy of which is placed at page

2 of the paper-book, the assessee had disallowed 30% of the professional fee paid of Rs.37,500/-. However, in the return of income, the assessee inadvertently mentioned it as a disallowance under section 43B of the Act. Due to this reason alone, the CPC while processing the return of income had disallowed the amount again. Though, the assessee furnished the requisite documentary evidences before learned Commissioner (Appeals) to demonstrate that disallowance under section 40(a)(ia) of the Act has been made suo motu, however, the first appellate authority has completely ignored not only the submissions of the assessee, but the evidences produced before him. Since, the facts on record clearly reveal that the assessee itself has made the disallowance under section 40(a)(ia) of the Act while filing the return of income, no further disallowance is required to be made. Accordingly, I delete the disallowance. This ground is allowed.

4. In ground no. 6, the assessee has raised the issue of short grant of TDS credit. Before me, it is the contention of learned counsel for the assessee that the TDS credit claimed by the assessee is in accordance with Form 26AS.

4.1 Learned Departmental Representative submitted that assessee's claim may be verified by the Assessing Officer.

4.2 In view of the aforesaid, I restore the matter to the Assessing Officer for factually verifying assessee's claim, vis-à-vis, Form 26AS and allow credit for TDS in accordance with law. This ground is allowed for statistical purposes.

5. Ground No. 7, being a general ground, does not require adjudication.

6. In the result, the appeal is partly is allowed.

Order pronounced in the open court on 10th November, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 10th November, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi