

आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH

BEFORE S.S.VISWANETHRA RAVI, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.124/NAG/2021
निर्धारण वर्ष / Assessment Year : 2017-18

Kema Logistics and Manufacturers Pvt. Ltd, 80B, Shivaji Nagar, Nagpur. PAN: AABCK 6785 E	Vs	The DCIT, CPC, Bangalore.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri G.J.Ninawe – DR
Date of hearing	09/11/2022
Date of pronouncement	15/11/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Commissioner of Income Tax Appeal, (NFAC) under section 250 of the Income Tax Act, 1961 for the A.Y.2017-18 passed on 02.08.2021. The assessee has raised the following grounds of appeal:

“1) The Hon'ble CIT (Appeals) erred in law and on facts by dismissing the appeal on the ground that EPF has not been paid as appeal was filed for disallowance of bonus payment.

2) The learned CIT (Appeals) erred in law and on facts by holding that the EPF payment of Rs.9,75,173/- remained unpaid before the due date of filing return as the amount relates to unpaid bonus at the year-end which was duly paid by the appellant before the due date of filing of Income tax return.

3) Any other ground that may be taken at the time of hearing

with the permission of the Honb'le Tribunal.”

2. None appeared on behalf of the assessee. We have heard Id.Departmental Representative(Id.DR) for the Revenue and perused the records.

3. On perusal of the order passed by the Id.CIT(A), it is observed that in para 4, the Id.Commissioner has mentioned as under:

“4. I have considered Intimation issued by CPC and submission made by appellant. The appellant has not deposited employee’s contribution to ESI & PF of Rs.975130/- within due date prescribed under PF Act and ESI Act. The Hon’ble Gujarat High Court in the case of Gujarat State Road Transportation [2014] 41 taxmann.com 100, as held that employee’s contribution not paid within the due date specified under PF / ESI Act is not to be allowed as per section 36(1)(va). The Finance Bill 2021, recently introduced in the Parliament has also clarified by inserting explanation in section 36 of the Act to the above effect as under:

(Explanatin 2- For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the “due date” under this clause.)”*

4. Thus, the Id.CIT(A) has adjudicated the grounds of appeal treating the amount of Rs.9,75,130/- as Employees Contribution towards ESI and PF.

5. However, the Id.CIT(A) in para 3 has reproduced the submission of the assessee. The same is reproduced here as under:

“Appellant has filed the Tax Audit Report and ITR for AY 2 017-18 within stipulated time. The auditor in clause 26(i)(B)(b) of their tax audit report (Form 3CA-3CD) for AY 2017-18 dated 30/08/2017 stated that bonus payable to employees as on 31/03/2017 amounting to Rs.9,75,130/- was unpaid on the date of the audit report (30/08/2017). The appellant had however paid the entire bonus amount of Rs.9,75,130/- on 25/09/2017 i.e. before 30/09/2017, the due date of filing of income tax return. The fact that the bonus had been paid before 30/09/2017 was informed, along with the proof of payment, by the appellant to the CPC after receiving a notice for adjustment u/s 143(1)(a) of the Income Tax Act. Still, the CPC has disallowed the amount of Rs.9,75,130/- and raised a demand of tax after processing the return u/s 143(1)(a) of the Income Tax Act.

As the bonus payment was duly made before 30/09/2017, it was erroneous to disallow it u/s 43B of the Income Tax Act. The intimation u/s 143(1) of the Income Tax Act is wrong on facts and bad in law. The prima facie disallowance of the bonus provision of Rs.9,75,130/- u/s 43B of the Income Tax Act is totally unjustified since the bonus was duly paid before the due date for filing income tax return for AY 2017-18, as mentioned in the first proviso to section 43B of the Income Tax Act. The addition made by CPC may please be deleted in full.

The ledger account of bonus payable for the next FY 2017-18, relevant bank statements showing bonus payment entries, related cash payment vouchers, certificate obtained from chartered accountant for payment of bonus before the due date of filing return are enclosed herewith which shows the fact that the bonus provision made for FY 2016-17 was completely paid by the appellant before 30/09/2017.”

6. On perusal of the submission of the assessee, which is reproduced by the Id.CIT(A) in his order, it is observed that assessee claimed that Rs.9,75,130/-, was “**Bonus payable**”. However, the Id.CIT(A) treated it as Employees Contribution to ESI and PF. We have also perused the order under section 143(1) dated 10.01.2019 in which the said disallowance was made. The order under section 143(1) has cryptically mentioned as under:

<i>Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)</i>				
<i>S.No.</i>	<i>Particulars</i>	<i>Amount in Income Tax Return</i>	<i>Amount mentioned in Form Annexure 3CD</i>	<i>Variance</i>
	<i>Inconsistency in amount debited to profit and loss account of the previous year but disallowable under section 43B</i>	<i>0</i>	<i>975130</i>	<i>975130</i>

7. Thus, the order under section 143(1) has not specified the nature of transaction pertaining to Rs.9,75,130/-. However, the assessee claimed before the Id.CIT(A) that it was Bonus payable to employees. But the Id.CIT(A) treated it as Employees Contribution to ESI and PF. Therefore, it is clear that the facts have not been clearly brought out by the Lower Authorities. Before us, no representation has been made by the assessee. Therefore, there was no means to understand the facts pertaining to Rs.9,75,130/- . In the facts and circumstances, we deem it appropriate to set-aside the case to Id.CIT(A) for denovo adjudication after giving opportunity to the assessee, thus, grounds of appeal raised by the assessee are allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 15th November, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th Nov, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण बेंच,
पुणे / DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.