

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

(Through Virtual Court)

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

आयकर अपील सं. / ITA No.45/NAG/2022
निर्धारण वर्ष / Assessment Year : 2018-19

Shyamkala Agro Processors Private Limited,
239, Satnami Layout, Bagadganj,
Nagpur-440008

PAN : AACCS4944G

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
CPC, Bangalore

.....प्रत्यर्थी / Respondent

Assessee by : Shri Umang Agrawal
Revenue by : Shri G.J. Ninawe

सुनवाई की तारीख / Date of Hearing : 09-11-2022
घोषणा की तारीख / Date of Pronouncement : 17-11-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 22-11-2021 passed by the National Faceless Appeal Centre ("NFAC"), Delhi for assessment year 2018-19.

2. We find that this appeal was filed with a delay of 79 days. Upon hearing both the parties, we find that the delay of 79 days is saved by the decision of Hon'ble Supreme Court passed during National Lockdown imposed on account of pandemic Covid-19. Therefore, the delay of 79 days is condoned.

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 both the parties and perused the material available on record. We note that the assessee is a private limited company having its registered office at Nagpur. The assessee filed its return of income for A.Y. 2018-19 on 18-09-2018 declaring total income at Rs.6,11,99,930/-. The CPC, Bangalore disallowed an amount of Rs.5,39,518/- 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.5,39,518/- which is employee's contribution vide para 5.2 of the impugned order 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 our 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 5 of the impugned order that the assessee deposited the employee's contribution to PF/ESI after the prescribed due date of relevant Acts which is not disputed by the Id. AR. Therefore, following the decision of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra) we 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 17th November, 2022.

Sd/-
(Dr. Dipak P. Ripote)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 17th November, 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, नागपूर,
/ DR, ITAT, 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