

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

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1635/Del/2021 : Asstt. Year : 2019-20

Vinod Malik, Opp. Jain Mandir Main Bazaar Ballab Garh, Faridabad, Haryana-121004	Vs	ADIT, CPC, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AJFPM5466Q		

Assessee by : Sh. Ajay Kumar Gupta, Adv.

Revenue by : Ms. Rajeshwari R., Sr. DR

Date of Hearing: 12.09.2022

Date of Pronouncement: 25.11.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC) , Delhi dated 04.08.2021.

2. Following grounds have been raised by the assessee:

"1. That in the present case, employees contribution Rs.5,70,838/- towards ESIC and EPF having been paid by the appellant employer before the date of filing return of income u/s 139(1) for the present period, such amount could not be added back in the income of the appellant declared in the return of income filed. This addition is against the well settled law on the subject.

2. That the disallowance of deduction as has been made in the present case could not be made by way of intimation u/s 143(1)(a) of the I.T. Act, 1961.

Such a disallowance could be made only after providing an opportunity to the assessee to establish its claim."

3. The issue of payment of employees contribution towards the PF has been ruled against the assessee by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. vs. Commissioner Of Income Tax-I in CA No. 2833/2016 vide order dated 12.10.2022. Hence, the ground no. 1 of the appeal of the assessee is liable to be dismissed.

4. In the ground No. 2 the assessee raised the issue of disallowing the payment without providing an opportunity to establish the claim and the intimation u/s 143(1)(a) of the Income Tax Act, 1961.

5. The provisions of Section 143(1)(a) are as under:

Assessment.

"143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustments, namely:—

*(i) any arithmetical error in the return; [***]*

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

[(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:]

[Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;]”

6. From the above, we find that the disallowance made by the CPC was in accordance with provisions of Section 143(1)(iv). The act mandates, before making an adjustment, an intimation has to be given to the assessee of such adjustment in writing or in electronic mode. The revenue could not produce evidence of sending the intimation to the assessee with regard to the proposed adjustment.

7. Failure to adhere to the mandatory procedure prescribed in statute has domino effect on the order passed u/s 143(1)(a) culminating in treating the order legally unsustainable.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 25/11/2022.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 25/11/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR