

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **859/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2020-21

Randstad Offshore Services
Private Limited,
Old No. 5 & 5A, New No. 9,
Pycrofts Garden Road,
Nungambakkam,
Chennai – 600 006.

[PAN: AABCC-4682-L]

(अपीलार्थी/Appellant)

Deputy Commissioner of
Income Tax,
v. Circle -1, LTU,
Chennai – 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. N.V. Narayanan, Advocate
: Shri. R. Bhoopathi, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 24.11.2022

घोषणा की तारीख/Date of Pronouncement

: 30.11.2022

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 22.08.2022 and pertains to assessment year 2020-21.

2. The assessee has raised the following grounds of appeal:

"1. Principles of natural of justice

1.1 *The order of the National Faceless Appeal Centre ['NFAC'] is contrary to the facts and circumstances of the case and against the principles of equity and natural justice.*

1.2 *The CIT(A) erred in dismissing the appeal without giving the appellant a reasonable opportunity of being heard.*

1.3 *The learned CIT(A) erred in stating in the order that a notice was issued on 06.05.2022 on the grounds of equity without appreciating the fact that the Annexure to the notice had no questions/clarifications sought in it.*

2. No delay in filing the CIT(A) appeal

2.1 *The learned CIT(A) erred in passing an arbitrary order stating that the appeal was filed belated, thereby dismissing the appeal.*

2.2 *The learned CIT(A) failed to appreciate that the appeal was well within time taking into account the Circular No 10/2021 dated 25 May 2021 and the order of Honorable Supreme Court of India on 10 January 2022 in Miscellaneous petition No. 21 of 2022.*

3. Intimation issued u/s 143(1) is void ab initio

3.1 *The learned CIT(A) erred in confirming the validity of the Intimation passed by the CPC u/s 143(1) without appreciating the fact that an intimation passed without providing the Appellant with a reasonable opportunity of being heard is void ab initio and hence, the disallowance made is invalid.*

3.2 *The learned CIT(A) ought to have appreciated the fact as per the statutory provisions of Section 143(1), any adjustments by way of intimation can only made only after giving the Appellant with 30 days to make suitable responses/submissions for adjustments proposed u/s 143(1)(a) of the Act.*

Disallowance of employee's contribution to Provident fund u/s 36(1)(va) r.w.s 2(24)(x) of the Act.

4.1 *The learned CIT(A) erred in confirming the disallowance made by the learned CPC amounting to ₹ 14,96,772 u/s 36(1)(va) r.w.s 2(24)(x) of the Act.*

4.2 *The learned CIT(A)/CPC failed to appreciate the fact that out of the total disallowance, remittance amounting to Rs. 14,29,275 was made within the statutory timelines and hence, there is no delay which warrants disallowance.*

4.3 *With respect to the remaining remittance of ₹ 67,447, The learned CIT(A)/CPC failed to consider the fact that the though the amount was paid beyond the due date under the relevant*

Act, the same was remitted before the due date of filing the return of income of the Appellant.

5. The CIT(A) erred in confirming the interests levied u/s 234 A, B and C of the Act

6. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income Tax Appellate Tribunal to decide this appeal according to law."

3. The brief facts of the case are that the assessee, Randstad Offshore Services Private Limited, is engaged in the business of providing manpower recruitment and support services to specialized clients, filed its return of income for the assessment year 2020-21 on 13.02.2021, declaring a total income of Rs. 7,24,50,650/-. The AO (CPC) processed return of income filed by the assessee and issued intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 23. 12.2021 and determined total income of Rs. 7,39,47,370/- by inter alia, making additions towards disallowance of belated payment to employee's contribution to PF u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act. The assessee carried the matter in appeal before the first appellant authority, but could not succeed.

4. The Ld. CIT(A) for the reasons stated in their appellant order dated 22.08.2022 dismissed appeal filed by the assessee

on technical ground for not filing appeal within the time prescribed under the Act. However, does not adjudicate grounds of appeal filed by the assessee on merits. Being aggrieved by the Ld. CIT(A), the assessee is in appeal before us.

5. The Ld. Counsel for the assessee referring to date of assessment order and date of filing of appeal before the CIT(A) submitted that, although there is a delay in filing the appeal before the Ld. CIT(A), but said delay is covered under Hon'ble Supreme Court *Sumoto* order in MP No. 21/2022 dated 10.01.2022, where the Hon'ble Supreme Court has granted extension of stay/general exemption for filing any appeal before appellant authorities. The Ld. CIT(A) without considering relevant facts has simply rejected appeal filed by the assessee without condoning the delay. In fact there is no delay in filing the appeal, if we exclude said period. He further submitted that the AO (CPC) disallowed employees' contribution to Provident Fund for the month of August, 2019 on the ground that the assessee has paid such contribution on 19.09.2019 on the basis of tax audit report issued in Form 3CD by the tax auditor. But, fact remains that the assessee

has remitted total contribution for the month of August, 2019 on 09.09.2019 itself, for which he has filed a copy of return along with challan for payment of contribution for the month of August, 2019.

6. The Ld. DR, on the other hand fairly agreed that the AO has disallowed contribution for the month of August, 2019 on the basis of tax audit report. However, the assessee has controverted with necessary evidences that there is no delay in payment of dues for the month of August, 2019 and thus, the issue may be decided in accordance with law.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Counsel for the assessee has explained the reasons for disallowance of employees' contribution to PF for the month of August, 2019 and as per explanation furnished by the assessee's counsel, the tax auditor has made an inadvertent error in mentioning the date of payment for the month of August, 2019 instead of actual date of payment i.e., 09.09.2019, he has mentioned in the tax audit report the date of payment as 19.09.2019. The AO (CPC), on the basis of tax

audit report has disallowed belated payment of employees' contribution to PF. Now, the Counsel for the assessee has filed a copy of return filed for the month of August, 2019 with EPFO and Challan for payment of contribution for the month of August, 2019 and as per details filed by the assessee, there is no delay in remittance of employees' contribution to PF for the month of August, 2019. Therefore, we are of the considered view that there is no reason to disallow employees' contribution to PF and thus, we direct the AO to delete additions made towards disallowance of employees' contribution to Provident Fund.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 30th November, 2022 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 30th November, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |