

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.33/Lkw/2022  
Assessment Year 2018-19

M/s Care Diagnostics Pvt. Ltd., 298, Kanpur Road, Barawirwa House, Lucknow PAN – AADCC 0579L	Vs	ACIT, Range-I, Lucknow (Faceless)
(Appellant)		(Respondent)

Appellant by	Shri A.P. Sinha, Advocate
Respondent by	Shri Amit Nigam, DR
Date of hearing	29/11/2022
Date of pronouncement	30/11/2022

**ORDER**

**PER BENCH:**

This is appeal by the assessee arising out of the order of Id. CIT(A), National Faceless Appeal Centre (NFAC) vide order No. ITBA/NFAC/S/250/2021-22/1038090072(1) dated 24.12.2021 against the assessment order dated 09.07.2020 passed by the Income Tax Officer, National e-Assessment Centre, Delhi u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for the AY 2018-19.

2. The grounds raised by the assessee are reproduced below:

"1- *In the facts and circumstances of the case and in law the Ld. C.I.T., (Appeals) has erred in confirming the action of the Ld. A.O. while*

*sustaining the addition of Rs. 16,97,891.00 which was a double addition because this amount was already added by the appellant while filing the return of income.*

2- *In the facts and circumstances of the case and in law the Ld. C.I.T., (Appeals) has erred in confirming the action of the Ld. A.O. while not adjudicating the issue of addition of Rs. 63,452.00 while a ground was taken before him.*

2-(a) *In the facts and circumstances of the case and in law the Ld. C.I.T., (Appeals) has erred in confirming the action of the Ld. A.O. blatantly legally erred by mentioning as under :-*

*"Addition of ESI amount u/s 36(1)(va) is not related to order u/s 143(3) passed by the AO as this appeal is against the assessment order u/s 143(3). The assessment order u/s 143(3) was passed is a Limited Scrutiny only on the issue of disallowance u/s 40A(7). Hence, no adjudication is required on this issue."*

2-(b) *In the facts and circumstances of the case and in law the Ld. C.I.T., (Appeals) has erred in confirming the action of the Ld. A.O. addition of Rs. 63,452.00 form part of income wrongly assessed u/s 143(1) of the Income Tax Act, 1961, at Rs. 75,10,820.00."*

3. Brief facts of the case are that assessee filed its return of total income of Rs.57,47,480/- on 21.9.2018. The return was processed u/s. 143(1) of the Act vide intimation dated 27.9.2019, determining the total income at Rs.75,10,820/-. Subsequently the return was selected for scrutiny assessment for limited scrutiny assessment for which statutory notices were issued and served on the assessee through e-mail/e-filing. In the course of assessment, Id. Assessing Officer noted that in the tax audit report an amount of Rs.16,97,891/- has been reported as disallowed u/s. 40A(7) of the Act in clause No. 21(e) of Form No.3CD by noting this addition was made by the Assessing Officer and the assessment was completed courses. Aggrieved, the assessee went an appeal before the Id. CIT(A).

4. In the first appeal, it was contended that this amount of Rs.16,97,891/- has already been disallowed in the income tax return filed by the assessee in terms of S.40A(7) of the Act relating to gratuity provision, disallowing the

same will amount to double addition and therefore ought to be deleted. It was also submitted that there was any inadvertent mistake in punching the data at correct place in the income tax return form. The assessee contended that during the year provision for gratuity amounting to Rs.16,97,891/- was created through debit to P&L account, which was added back to the P&L account while filling the data in Form ITR-6, the said amount was mistakenly included in figure entered against S. No.11 (b) of schedule-OI instead of punching Rs.52,683/- at S.No. 11(b) and Rs.16,97,891 at S.No. 9(c) of Schedule-OI. It was also submitted before Id. CIT(A) that Id. AO instead of considering the returned income has considered the income processed u/s. 143(1) of the Act while assessing the total income u/s. 143(3). He has thus continued with the disallowance made in respect of deposit of P&L and ESI contribution received from employees of Rs.63,452/-, deposited after the due date. Ld. CIT(A) dismissed the appeal of the assessee in respect of addition made on account of provision for gratuity on the issue relating to disallowance made u/s. 36(1)(va) towards PF and ESI contributions by the received from the employees. Ld. CIT(A) gave his finding that this addition is not related to order passed u/s. 143(3) and hence no adjudication is required on this issue.

5. Aggrieved, the assessee is in appeal before the Tribunal. At the outset, Id. counsel for the assessee, Shri A.P. Sinha, Advocate submitted a copy of computation of total income to demonstrate that the assessee has *suo moto* disallowed the amount relating to bonus provision of Rs.52,683/- and gratuity provision of Rs.16,97,891/- after which the profit for the year was arrived at Rs.57,49,479/-. Ld. Counsel submitted that disallowance made by the Id. AO on account of provision for gratuity tantamounts to double addition and ought to be deleted as is evident from the computation of total income and the return form placed on record. In respect of ground taken on the issue relating to addition of Rs.63,452/- towards PF and ESI contribution received from the

employees added u/s. 36(1) (va) of the Act. It was strongly contended that Id. AO has wrongly taken the total income has processed u/s. 143(1) at Rs.75,10,821/- for arriving at the assessed income u/s. 143(3). He submitted that once the case was selected for limited scrutiny u/s. 143(3) of the Act, the intimation in respect of processing of return u/s. 143(1) loses its relevance. He also pointed out that the issue for limited scrutiny was only in respect of “disallowance u/s. 40A(7) – (gratuity provision)”, thus, Id. AO exceeded the jurisdiction by continuing with the adjustment made in the process of return u/s. 143(1) in relation to disallowance made u/s. 36(1)(va) towards employees contribution of PF and ESI.

6. Per contra, Id. Sr. DR placed reliance on the orders of authorities below.

7. We have heard the rival contentions and have perused the material placed on record. At the outset, it is fact on record that the assessee has *suo moto* made a disallowance in respect of gratuity provision in its computation of total income as reported in the income tax return form. The addition made by the Id. AO by referring to the disclosure made by the auditor in the tax audit report in Form No.3CD is tantamount to double addition for the same amount towards gratuity provision.

8. Considering the facts on record as evidently demonstrated by the Id. counsel for the assessee, we find it proper to direct for the deletion of the disallowance so made u/s. 40A(7) of the Act towards gratuity provision of Rs.16,97,891/-. Accordingly, Ground No. 1 is allowed.

9. In respect of Ground No.2 relating to disallowance u/s. 36(1)(va) relating to employee contribution of PF and ESI, we note that the adjustment was made while processing the return u/s. 143(1), however, the case of the assessee was selected for limited scrutiny u/s. 143(3) of the Act on a very

specific limited issue relating to disallowance u/s. 40A(7) for gratuity provision. In the light of recent decision by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. vs. CIT-1, in Civil Appeal No. 2833 of 2016, the issue relating to disallowance u/s. 36(1)(va) of the Act in respect of deposit of employee contribution towards PF and ESI fee has no longer *res integra* has held by Hon'ble Supreme Court in its decision. Respectfully following the decision of the Hon'ble Supreme Court on the said issue, we sustain the addition of Rs.63,452/-. While holding so, it is important to note that the assessee in its submission before the Id. CIT(A) on this issue has stated that these amounts have been deposited by the assessee before the due date of filing of income tax return u/s. 139(1) of the Act and has claimed for allowance. This contention of the assessee no longer holds fort in terms of the decision of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (Supra)). Accordingly, Ground No. 2 raised by the assessee is dismissed.

10. In the result, appeal of the assessee is partly allowed.

(Order pronounced in the open court on 30/11/2022)

**Sd/-**  
**(MAHAVIR SINGH)**  
**Vice President**

**Sd/-**  
**(GIRISH AGRAWAL)**  
**Accountant Member**

Aks -  
Dtd. 30/11/2022

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

Assistant Registrar