

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH: BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1003/Bang/2022
Assessment Year: 2019-20

I-Security Services, 1403, 80 Ft Main Road, Rajendranagar, Koramangala Bengaluru-560 047. PAN - AACFI 2871 B	Vs.	The Dy. Commissioner of Income-tax, CPC, Bangalore
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri Ganesh R Ghale, Standing Counsel

Date of Hearing	:	20.12.2022
Date of Pronouncement	:	20.12.2022

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the NAFC dated 18/08/2022 with the following grounds of appeal:-

"1. The order dated 18th August 2022 passed by the Commissioner of Income-tax

(Appeals), National Faceless Appeal Centre is bad and erroneous and against the facts and circumstances of the case in so far as it is against the Appellant;

2. The Learned AO erred in summarily dismissing the appeal without providing an effective opportunity of hearing to the Appellant.

GROUND ON MERITS:

3. The Learned CIT(A) and the Learned AO erred in determining the total income of the Appellant for AY 2019-20 at Rs.42,84,181/- against the returned income of Rs. 22,22,489/-.

7. The Learned CIT(A) while dismissing the appeal, erred in upholding the addition of Rs 20,61,692/- made by the Learned AO towards disallowance of PF and ESI contribution of employees paid beyond the due date under section 36(1)(va) read with section 43B of the Act.

8. The Learned CIT (A) and the Learned AO have erred in making the addition despite the fact that the Appellant had made the remittances towards PF and ESI contribution of employees before the due date of filing return under section 139(1) of the Act, which fact has not been disputed by the Learned CIT (A) or Learned AO.

9. The Learned CIT(A) and the Learned AO erred in not appreciating that the issue was covered by the decisions of the Hon'ble Karnataka High Court in the case of CIT v Shabari Enterprises (2008) 298 ITR 141 (Kar), CIT v Spectrum Consultants India Pvt Ltd (WA No.4077/2013), Essae Teraoka Pvt Ltd v DCIT (ITA No.480/2013);

Each one of the above grounds is without prejudice to the other and without prejudice to the grounds of appeal taken earlier.

The Appellant reserves the right to further add, alter or amend each one of the above grounds of appeal."

2. The brief facts of the case are that the assessee is a partnership firm providing security services. The assessee following mercantile system of accounting and the books of accounts are audited u/s 44AB of the Income-tax Act. The assessee filed return declaring income of Rs.22,22,489/-. The return was processed u/s 143(1)(a) of the Act on 05/03/2020 by disallowing of Rs.20,61,692/- and computed total income @ Rs.42,84,181/- by disallowing delayed deposit of employees' contribution to PF/ESI as per sec.36(1)(va). Before the CIT(A), the assessee filed appeal belatedly of 51 days and the CIT(A) condoned the delay. During the course of appellate proceedings, the CIT(A) issued notice on four occasions and no compliance was made by assessee. Accordingly, the CIT(A) decided the issue on the documents available on record before him. After discussing in detail and relying on various judgments of the High Courts, he dismissed the appeal of the assessee.

3. Aggrieved from the order of the CIT(A), the assessee filed appeal before ITAT.

4. None appeared on behalf of the assessee. Therefore, the case was decided in the presence of Id.DR as per the documents available on record.

5. The Id.DR relying on the order of the lower authorities submitted that the objections raised by the assessee is not sustainable since the CIT(A) gave four opportunities to the assessee but he has not responded to any of the

notices. The CIT(A) has decided the issue on merits of the case and he has relied on several judgments of various High Courts. He also submitted that the addition can be made while processing the return as per sec. 143(1) of the Act. In support of his arguments, he relied on the judgment of the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income-tax reported in (2022) 138 taxmann.com 571. He submitted that the issue is squarely covered in favour of the Revenue on the recent judgment of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. Vs CIT-1 reported in [2022] 143 taxmann.com 178. He submitted that the similar issue has been decided by the Tribunal after relying on the judgments of Hon'ble Supreme Court of India in the case of M/s. IV Sanctum vs Asstt. Director of Income Tax CPC Bengaluru, in ITA No. 986/Bang/2022 vide order dated 24.11.2022 for the AY 2019-20. He further submitted that the assessee did not deposit the employees' contribution to PF/ESI within the due date as per the respective Act, which was clear from the tax audit report uploaded by the assessee at the time of filing the return of income.

6. After hearing the ld.DR and perusing the entire documents available before us, I observe that the assessee filed return of income within the due date but he did not deposit within the due date the employees' contribution to PF/ESI as per the respective Act, to which the CPC (Central Processing Center), while processing the income of the assessee, disallowed as per section 36(1)(va) r.w.s 2(24)(x) of the Act. I further noted that on the statement of facts submitted by the assessee, he has referred several judgments as per para 4 of the statement of facts. The statement of facts and grounds of appeal submitted by the assessee have been carefully considered but not found favourable to the assessee. Recently, a similar issue has decided by the Hon'ble Supreme Court of India in the case of Checkmate Services cited supra. We found substance on the submission of the ld.DR and the case law relied by him is squarely applicable in the present facts on hand. Respectfully following the judgments cited supra, we dismiss the appeal filed by the assessee.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the court on 20th December, 2022

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 20th December, 2022.
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar/ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed.....