

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' B ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No. 671/Hyd/2022		
Assessment Year: 2020-21		
Global Logic Technologies (P) Ltd, Hyderabad PAN:AADCR5222K (Appellant)	Vs.	Assessing Officer Hyderabad (Respondent)
Assessee by:	C.A Tanpreet Kohli	
Revenue by:	Shri A.R. Kumar Aditya, DR	
Date of hearing:	05/01/2023	
Date of pronouncement:	05/01/2023	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 3.10.2022 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2020-21.

2. Facts of the case, in brief, are that the assessee is a company engaged in rendering IT related services. It filed its return of income on 15.2.2022 declaring total income of Rs.26,67,20,510/- under the normal provisions of the Act and book profit under the provisions of section 115JB at Rs.58,28,72,316/-. The CPC Bangalore in its intimation u/s 143(1)(a) of the Act apart from other addition/disallowance made disallowance of Rs.2,28,56,810/- on account of late deposit of

employees contribution of PF & ESI. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee.

3. Aggrieved with such order of the learned CIT (A)-NFAC the assessee is in appeal before the Tribunal by raising the following grounds:

*“1. That on facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeal) (“CIT(A)”) is bad, both in the eyes of law and on facts.*

*2. That the learned CIT(A) has erred, both on facts and in law, in confirming the order of the ADIT(CPC) for assessing the income at Rs 28,95,77,320/-, as against the income of Rs returned 26,67,20,510/-, since,*

- a. The disallowance of Rs 2,28,56,810/- is erroneous, as employee's contribution to a. employee's welfare fund (PF, ESI etc.) was deposited before the due date of filing of return;*
- b. Without prejudice, the learned CIT(A) has erred in confirming the disallowance of Rs 10,66,705/-, which represents employee's contribution deposited within the stipulated due dates.*
- c. Without prejudice, the learned CIT(A) has erred in confirming the disallowance of Rs. 5,04,200, being professional tax not disallowable under section 36(1)(va) of the Act.*
- 3. That the learned CIT(A) erred, both on facts and in law, in confirming interest under section 234A of the Act.*
- 4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts & in law, in passing the order without giving assessee an adequate and proper opportunity of being heard in violation of principle of natural justice.*
- 5. The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

4. The learned Counsel for the assessee at the outset relying on various decisions submitted that the disallowance of Rs.2,28,56,810/- by the Assessing Officer and upheld by the

learned CIT (A) NFAC on account of late payment of Employees' Contribution to PF & ESI is not correct. He submitted that an amount of Rs.10,66,705/- has been paid within the statutory due date as per the PF & ESI Act and therefore, to this extent both the lower authorities are not justified. He, however, conceded that these details were not filed before the lower authorities and, therefore, the assessee may be given an opportunity to file the details to substantiate that an amount of Rs.10,66,705/- has been paid within the statutory due date. So far as the disallowance of Rs.5,04,200/- being late payment of professional charges is concerned, he submitted that the provisions of section 2(24)(x) r.w.s 36(1)(va) are not applicable to professional tax and therefore, the lower authorities are incorrect in disallowing the same.

5. The learned DR, on the other hand, relied on the recent decision of the Hon'ble Supreme Court in the case of Checkmate Services P Ltd vs Commissioner Of Income Tax-I on 12 October, 2022 in Civil Appeal No.2833 of 2016 and submitted that in view of the decision of the Hon'ble Supreme Court late payment of PF & ESI after the statutory due date is not an allowable expenditure.

6. We have heard the rival arguments made by both the sides, perused the orders of the CPC and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the CPC Bangalore in the intimation disallowed an amount of Rs.2,28,56,810/- on account of late payment of PF & ESIC which has been upheld by the learned CIT (A) NFAC. It is

the submission of the learned Counsel for the assessee that the above amount of Rs.2,28,56,810/- includes an amount of Rs.10,66,705/- which represents employees' contribution to PF/ESI deposited within the statutory date and an amount of Rs.5,04,200/- being profession tax is not disallowable u/s 2(24)(x) r.w.s. 36(1)(va) of the I.T. Act. We find the Hon'ble Supreme Court in the case of Checkmate Services P Ltd vs Commissioner Of Income Tax (Supra) has held that the employees' contribution to PF & ESI, if not paid on or before the statutory due date, cannot be allowed as a deduction. Therefore, the order of the learned CIT (A)-NFAC disallowing the late payment of PF & ESI in principle is correct. However, as mentioned by the learned Counsel for the assessee, the above amount of Rs.2,28,56,810/- includes an amount of Rs.10,66,705/- which has been paid within the stipulated due date and an amount of Rs.5,04,200/- represents professional tax to which the provisions of section 2(24)(x) r.w.s.36(1)(va) are not applicable. We, therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the details and if the amount of Rs.10,66,705/- being employees contribution to PF & ESI is deposited within the stipulated due date to delete the same. Similarly, the amount of Rs.5,04,200/- being the professional tax cannot partake the character of employees' contribution to PF & ESI and therefore, the Assessing Officer is directed to verify the same and pass appropriate order in accordance with law. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly.

7. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 5<sup>th</sup> January, 2023.

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
--	--

Hyderabad, dated 5<sup>th</sup> January, 2023.

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Global Technologies (P) Ltd., Plot No 590A, Phase-I, Road No.31, Jubilee Hills, Hyderabad 500033
2	Asstt. Director of Income Tax, C.P.C. 1 <sup>st</sup> Floor, Prestige Alpha No.48/1 and 48/2, Beratenaagrahara Hosur Road, Uttarahilli Hobli, Bangalore 560100
3	CIT (A)-NFAC Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*