

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

आयकरअपीलीयअधीकरण, न्यायपीठ “C”कोलकाता,

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.246/Kol/2022
Assessment Year: 2018-19**

Crawley & Ray Founders Engineers Pvt. Ltd. 32, Foreshore Road, PO Botanical Garden, Kolkata- 711103 (PAN: AAACC9999H)	Vs.	Deputy Commissioner of Income-tax, CPC, Bangalore.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri R. N. Mallick, CA
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 14.12.2022
Date of Pronouncement : 16.12.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Delhi, National Faceless Appeal Centre (NFAC) vide Order No. ITBA/NFAC/S/250/2021-22/1040862682(1) dated 16.03.2022 passed against the assessment made by the DCIT, CPC, Bangalore u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 14.11.2019.

2. Shri R, N. Mallick, CA appeared for the assessee and Smt. Ranu Biswas, Addl. CIT, DR appeared for the revenue.

3. Grounds of appeal raised by the assessee are reproduced as under:

“1. Incorrect disallowance u/s. 43B of Gratuity contribution of Rs.1,00,000/- (Rupees one lakh) paid on 1st October, 2018, within time allowed u/s. 139(1) for AY 2018-19 i.e. 31st October, 2018.

2. Incorrect disallowance u/s. 36(1)(va) of ESI Employees’ contribution of Rs.69,427/- (Rupees sixty nine thousand four hundred and twenty seven) paid within respective due dates under ESI Act.”

4. Brief facts of the case are that assessee filed its return of income on 25.09.2018 which was processed by Centralized Processing Centre (CPC) Bangalore u/s. 143(1) of the Act by issuing intimation dated 14.11.2019. In the said intimation, disallowance of expenditure indicated in the audited report but not taken into account in computing the total income in the return were noted in respect of two items (i) payment on account of gratuity disallowed u/s. 43B of the Act of Rs.6,75,000/- and (ii) employees’ contribution under ESI Act after due date u/s. 36(1)(va) of the Act of Rs.69,427/-. Aggrieved by the said disallowances assessee went in appeal before the Ld. CIT(A) who confirmed the addition. Aggrieved, the assessee is in appeal before the Tribunal.

5. Ld. Counsel has placed on record a synopsis and paper book containing 41 pages. On the addition in respect of gratuity contribution, Ld. Counsel submitted that amount of Rs.6,75,000/- remained due as on 31.03.2018 which was reported as not paid on or before due date for furnishing the return of income u/s. 139(1) of the Act in Form 3CD dated 22.09.2018 for which he referred to the tax audit report placed in the paper book page 24. Ld. Counsel submitted that after the filing of Form 3CD, assessee deposited Rs. 1 lakh to LIC Gratuity Fund on 10.10.2018 which is before the due date for filing of return u/s. 139(1) of the Act, for AY 2018-19 due date being 31.10.2018. To corroborate the submission, he referred to the deposit

memorandum issued by LIC Pension & Gratuity Scheme Department, Kolkata which is dated 01.10.2018 placed at page 14 of the paper book. Ld. Counsel thus contended that assessee has admitted the disallowance of Rs.5,75,000/- out of Rs.6,75,000/- u/s. 43B of the Act and paid self assessment tax of Rs.2,02,370/- on 04.12.2019. He thus, submitted that deduction of Rs. 1 lakh ought to be allowed in respect of gratuity contribution which has been deposited before the due date for furnishing of return u/s. 139(1) of the Act.

6. In respect of employees' contribution to ESI, he submitted that there is a typographical mistake in Form 3CD wherein the actual dates of payment of ESI contribution reported in clause 20(b) have been written as containing year "2018" instead of year to be written as "2017". To corroborate the correct and actual date of payment, Ld. Counsel referred to the monetary contribution challan for the three dates, of 19.05.20217 placed at page 32, of 20.06.2017 placed at page 34 and of 14.07.2017 placed at page 36 of the paper book. He thus submitted that all the three payments totalling to Rs.69,424/- were made on or before the respective due dates of 21.05.2017, 21.06.2017 and 15.07.2017 respectively.

7. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

8. We have perused the material available on record and gone through the submissions made by the ld. Counsel. We take note of the fact that assessee has made a contribution of Rs. 1 lakh to LIC Gratuity Fund vide receipt dated 01.10.2018 which is before the due date of filing of return of income on 31.10.2018. On this verified fact, we hold that assessee is eligible for claiming deduction for this amount of Rs. 1 lakh. Accordingly, ground no. 1 taken by the assessee is allowed.

9. In respect of addition made for delay in depositing of employees' contribution to ESI, from the perusal of Form 3CD, we note that there is a typographical mistake in writing the year of deposit which has been mentioned as "2018" instead of "2017" as placed at page 22 of the paper book. This fact has been corroborated by the three challans to demonstrate the correct date of deposit of ESI contribution which is made on or before the respective due dates. Details in this respect are tabulated for ease of reference:

<i>Month</i>	<i>Amount Rs.</i>	<i>Due Date</i>	<i>Paid on</i>
<i>April, 2017</i>	<i>22,600</i>	<i>21.05.2017</i>	<i>19.05.2017</i>
<i>May, 2017</i>	<i>25,035</i>	<i>21.06.2017</i>	<i>20.06.2017</i>
<i>June, 2017</i>	<i>21.792</i>	<i>15.07.2017</i>	<i>14.07.2017</i>

10. Considering the factual matrix along with verifiable documentary evidence, we hold that the addition made of Rs.69,424/- is to be deleted. Accordingly, ground no. 2 of the assessee is allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 16th December, 2022

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 16th December, 2022

JD, Sr. P.S.

Copy to:

1. The Appellant;
 2. The Respondent.
 3. CIT(A), Delhi, NFAC
 4. The Pr. CIT, .
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata