

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.33/Hyd/2023		
Assessment Year: 2019-2020		
Axiom Energy Conversion Ltd, Hyderabad PAN:AACCA0120E (Appellant)	Vs.	Dy. C.I.T. Circle 1(1) Hyderabad (Respondent)
Assessee by:	Shri M.V. Anil Kumar, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	23/01/2023	
Date of pronouncement:	24/01/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 11/11/2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2019-2020.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A)-NFAC in sustaining the addition of Rs.17,55,091/- on account of delayed payment of employees' contribution to PF & ESI.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of manufacture of SMPS Adapters for water purifiers, Set top Boxes and mobile

chargers. It filed its return of income on 30.10.2019 declaring total income of Rs.33,46,793/-. The CPC Bengaluru in the intimation issued u/s 143(1)(a)(iv) of the I.T. Act proposed addition of Rs. 17,55,091/- being delayed payment of Employees Contribution to PF & ESIC.

4. In appeal, the learned CIT (A)-NFAC rejected the contention of the assessee that such payments were made before the due date of filing of the return. The CIT (A)-NFAC accordingly dismissed the appeal filed by the assessee.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

6. We have heard the rival arguments made by both the sides and perused the record. We find the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT reported in 143 Taxmann.com 178 has held that the employees' contribution to PF & ESI to the extent it is not paid within due date prescribed under the PF Act is not allowable u/s 36(1)(va) of the I.T. Act. The Hon'ble Supreme Court has further held that the provisions of section 43B would not be applied to the provisions of section 36(1)(va) of the Act in respect of Employees' contribution. Since the assessee in the instant case admittedly not paid the employees' contribution to PF & ESI before the statutory due dates prescribed under the said Act, therefore, we are of the considered opinion that the CIT(A)-NFAC was fully justified in sustaining the addition made by the Assessing Officer. The various decisions relied on by the learned Counsel for the assessee are distinguishable and not applicable to the facts of the present case in view of the binding decision of the

Hon'ble Supreme Court cited (Supra). In view of the above discussion, we uphold the order of the learned CIT (A)-NFAC in sustaining the addition made by the CPC Bengaluru in the intimation u/s 143(1)(a)(iv) of the I.T. Act and the grounds raised by the assessee are dismissed.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 24th January, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 24th January, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Axiom Energy Conversion Ltd C/o M.Anandam & Co. C.A, Flat No.7A Surya Towers, SP Road, Secunderabad 500003
2	Dy. CIT, Circle 1(1) Hyderabad
3	CIT (A)-NFAC, Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order