

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 356/JP/2022
निर्धारण वर्ष / Assessment Years : 2020-21

M/s Nigam Jewels Pvt. Ltd. H-45, SEZ 1, RIICO Industrial Area, Sitapura, Jaipur.	बनाम Vs.	ACIT/DCIT, Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCN2403N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Mirza Azhar Baig (JCIT)

सुनवाई की तारीख / Date of Hearing 01/11/2022
उदघोषणा की तारीख / Date of Pronouncement : 06/02/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as "NFAC"), Ld. CIT(A) for the assessment year 2020-21 dated 06.09.2022.

2. The assessee has raised the following grounds:-

"1. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 1,11,230/- u/s 36(1)(va) on account of delayed

payment of employees contribution toward PF & ESI even when the same was paid before due date of filing of return.

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee.”

3. The assessee has also raised additional ground which reads as under:-

“The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 1,11,230/- u/s 36(1)(va) on account of delayed payment of employees contribution toward PF & ESI by not appreciating that :-

(1) The above addition is not on account of disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return as per section 143(1)(a)(iv)

(ii) the said amount has been paid before due date of filing of return and thus cannot be added to income in view of decision of jurisdictional High Court in case of CIT vs. SBBJ 99 DTR 131 and CIT vs. Jaipur Dugdh Utpadak Sahakari Sangh Ltd. 98 DTR 109.”

3.1 The Id. AR placed before us the additional ground challenging the adjustment u/s 143(1) of the IT Act and since this legal ground, the Id. DR did not objected to this legal ground and therefore we are admitting the additional ground for adjudication.

4. The brief fact of the case are that the assessee filed the return along with tax audit report on 31.12.2010 at total income of Rs.58,92,150/-. At clause no. 20(b) of Form 3CD the tax auditor has reported the contribution received from the

employees towards PF and EST along with the due date of making payment of the same to the concerned authorities. The CPC in processing the return made adjustment of Rs.1,11,230/- u/s 143(1)(a)(iv) stating that there is inconsistency in sum received from employees as contribution to PF or funds set up under ESI Act for the welfare of employees to the extent not credited to the employees account on or before the due date u/s 36(1)(va) claimed in return in Schedule-OI and audit report. Against the said adjustment assessee filed an appeal before Ld. CIT(A) who confirmed the adjustment made by CPC by holding at Pg 17, Para 5.30 that the disallowance made by CPC u/s 143(1) of the IT Act on account of appellant's failure to pay the employees contribution to PS/ESI of Rs.1,11,230/- within the prescribed due dates as per section 36(1)(va) is strictly in accordance with the law.

5. The relevant finding of the ld. CIT(A) is reproduced as under:-

“5.29 From the above judicial decisions and also the unambiguous wording of the now amended provisions of section 36(1) and 43B of the I.T. Act, it is clear that the employees contribution can be allowed as a deduction only if it had been paid within the prescribed due dates under the relevant welfare fund and this position of law is and has always been the case and the clarifications brought about by the amendment clearly apply retrospectively. The case laws relied on by the appellant which were rendered prior to the clarificatory amendments, therefore are not applicable to the present case.

5.30 It is therefore, held that the disallowance made by the CPC u/s 143(1) of the I.T. Act on account of appellant's failure to pay the employee's contribution of PF/ESI of Rs. 1,11,230/- within the

prescribed due dates as per section 36(1)(va) is strictly in accordance with law. The order is therefore, confirmed fully. Appellant's ground on the issue fails.

6. Accordingly, this ground of appeal is treated as dismissed.

7. Decision on ground of appeal No. 2:

7.1 This ground states that the appellant craves right to add, alter or amend any of the grounds of appeal. However, no such option has been exercised during the appellate proceedings and this ground of appeal is, therefore, academic in nature and considered to be a dismissed ground.

7.2 Accordingly, this ground of appeal is treated as dismissed.”

6. Being aggrieved by the CIT(A) the assessee preferred an appeal before us. The Id. AR for assessee submitted a detailed written submissions which are as under:-

“At the outset it is submitted that the adjustment which can be made u/s 143(1)(a) in processing the return has been specifically provided as under:-

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142,,such return shall be processed in the 'allowing manner, namely:-- -

(a) the total income or loss shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;*
- (V) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter UI--A under the heading "C.----Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or*
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return*

It may be noted that under sub-clause (iv) the adjustment can be only in respect of disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. however, by Finance Act, 2021 w.e.f. 01.04.2021, apart from disallowance of expenditure, the word 'or increase in income' is also brought into the Statute. Thus, so far as AY under consideration is concerned, what can be adjusted under sub-clause (iv) is only disallowance of expenditure indicated in the audit report. The employees contribution to PF/ESI u/s 36(1)(va) is not an expenditure rather it is the sum received by assessee from its employees which is deemed as income u/s 2(24)(x) if such sum is not credited to the employees account in the relevant fund on or before the due date. Thus, the adjustment made u/s 143(1)(a)(iv) in respect of employees contribution to PF/ ESI is not as per law and therefore, the adjustment confirmed by CIT(A) be directed to be deleted.]

2. Otherwise also, the amount of Rs.1,11,230/- has been paid by the assessee before due date of filing of return as per the details given at Pg 3 of the CIT(A) order. The same is not to be added as income in view of the decision of jurisdictional high Court in case of CIT Vs. 5I313J 99 DTR. 131 and CIT Vs. Jaipur Dugdh Utpadak Sahakari Sangh Ltd. 98 DTR 109. Thus, when the jurisdictional high Court has taken a view in favour of the assessee, the same cannot be a subject matter of adjustment u/s 143(1)(a).

3. The Hon'ble Supreme Court in its decision dt. 12.10.2022 in case of Checkmate Services Pvt. Ltd. & Ors. Vs. CIT 218 DTR 401 has held that the employees contribution towards IT & ESI is allowable as deduction u/s 36(1)(va) only if payment is made within the due dates under the respective Act. However, on that basis the adjustment made by AO & confirmed by Ld. CIT(A) cannot be upheld in view of decision of Hon'ble Punjab & Haryana High Court in case of CIT Vs. Haryana State Cooperative Supply & Marketing Federation Ltd. 80 Taxman 330 where it is held that the rectification is not permissible on the ground that Supreme Court has later impliedly overruled High Court decision.

In view of the above, addition confirmed by CIT(A) be directed to be deleted.”

7. Per contra, the ld. Sr. DR has no objection for admitting additional ground of appeal hence, we are admitting the additional ground of appeal but at the same hearing relied upon the finding of the ld. CIT(A) and decision of Hon'ble Apex Court in case of Checkmate Services P. Ltd. vs CIT Appeal No. 2833 of 2016 dated 12.10.2022.

8. We have considered the rival contention and perused the orders of the authorities and the material available on record. It is noted that the assessee has raised additional/modified ground of appeal under Rule 11 of the ITAT Rules, 1962 and submitted to modify the ground which is legal ground and ld. AR for the assessee admitted that the modified ground in decided the appeal in view of the decision of Hon,ble Supreme Court in case of CIT vs. NTPC Ltd. 229 ITR 383 for imparting substantial justice to the assessee.

9. Taking into consideration the merit of the case, the ld. AR for the assessee has filed a detailed written submission and submitted that there is no delay in payment of employee contribution towards PF & ESI and the same was paid before the due date of filing of return. However, he has pressed before us the additional technical ground submitting that the adjustment made u/s 143(1) are outside the purview of provisions of law.

10. Since we have allowed the appeal of the assessee on technical ground. We have not decided the ground of the assessee on merits and that ground left open.

11. Taking into rival contentions placed before us and on perusing the record. We are of the considered view that the adjustment made by the lower

authorities are outside the purview of Section 143(1) of the act. The extract of the provisions of Section 143(1) hereinbelow:-

Intimation u/s 143(1)		आयकर केन्द्र CENTRALIZED PROCESSING CENTER DIRECTORATE TAX DEPARTMENT		
Name :	NIGAM JEWELS PRIVATE LIMITED	AY :	2020-21	
PAN :	AADCN2403N	DIN :	CPC/2021/A6/198817501	
		Ack. No. :	977342291311220	
Notes:				
1. Please refer to this office communication dated sent to the email ID accounts@nigamjewels.com. As there has been no response/ the response(s) provided is not acceptable the adjustments(s) as mentioned below are being made to the total income as per the provisions of section 143(1)(a).				
Adjustments u/s 143(1)(a)				
Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return - 143(1)(a)(iv)				
Sl.No.	Particulars	Amount in Income Tax Return	Amount mentioned in Form Annexure 3CD	Proposed adjustment to total income
1	There is inconsistency in Any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date [36(1)(va)] claimed in return in schedule OI and audit report	0	1,11,230	1,11,230

The adjustment made by the Id. AO and on perusing the provisions of law, we are of the considered view that the adjustment made by the Id. AO is outside the purview of Section 143(1) of the IT Act and therefore, the addition so made by the lower authorities hereby deleted.

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

Order pronounced in the open Court on 06/02/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 06/02/2023.

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Nigam Jewels Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT/DCIT, Jaipur.
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 356/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar