

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.106/Chny/2023
निर्धारण वर्ष /Assessment Year: 2017-18

M/s.Solar Outsourcing Services,
29/1/12 Wahab Complex,
Heber Road,
Bheema Nagar,
Trichy-620 001.

v. The Income Tax Officer,
Ward-1(2),
Trichy.

[PAN: ABTFS 2116 B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N. Arjun Raj, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.P. Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 02.03.2023
घोषणा की तारीख /Date of Pronouncement : 08.03.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 15.11.2022, and pertains to assessment year 2017-18.

2. The assessee raised the following grounds of appeal:

1. The order of the NFAC dated 15.11.2022 vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1047320615(I) for the above assessment year is contrary to law, facts, and in the circumstances of the case.

2. The NFAC erred in sustaining the disallowance of Rs.12,10,310/-employees' contribution to EPF & ESI by invoking the amended provisions of section 36(1)(va) read with section 43B

:: 2 ::

of the Act with sum was disallowed in the intimation order issued under Section 143(1) of the Act, without assigning proper reasons and justification.

3. The NFAC failed to appreciate that the impugned adjustment made is beyond the scope of the proceedings u/s.143(1) of the Act thus vitiating the addition made therein.

4. The NFAC failed to appreciate that decision rendered without granting meaningful opportunity of hearing to the appellant should be reckoned as nullity in law and ought to have appreciated that there was no power vested with them to pass a cryptic / non speaking order in contra distinction to the power / duty to pass a speaking order on the issues raised even in the context of ex-parte decision.

5. The NFAC failed to appreciate that recent decision of the Supreme Court being rendered in the context of scrutiny assessment, the subsequent decisions of Pune Bench and Mumbai Bench of the Income Tax Appellate Tribunal would fortify the stand of the appellant on the narrow scope of Section 143(1) of the Act for making the disputed addition / disallowance / adjustment which enhanced / created wrong demand.

6. The NFAC failed to appreciate that the order of intimation under Section 143(1) of the Act / 154 of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

7. The NFAC failed to appreciate that the amended provisions applicable from the assessment year 2021-22 was erroneously applied and ought to have appreciated that the said amended provisions could not have retrospective application, thereby vitiating the decision rendered in the impugned order.

8. The NFAC failed to appreciate that in any event the entire re-computation of taxable total income was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.

9. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that the assessee is a man power supplier agent, filed its return of income for the AY 2017-18, declaring total income of Rs.1,10,750/-. The return of income filed by the assessee has been processed u/s.143(1) of the Act, and determined total income of Rs.9,75,590/- by making disallowance towards employees' contribution to PF u/s.36(1)(va) of the Act. The assessee carried the matter in appeal before the First Appellate Authority. Before the Ld.CIT(A), the assessee neither appeared nor filed any details which is evident from Para No.4 of the order of the Ld.CIT(A), where number of opportunities were given to the assessee, but neither the assessee appeared nor submitted any details.

:: 3 ::

Therefore, the Ld.CIT(A) by taking note of certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of B.N.Bhattachargee, reported in 118 ITR 461 (SC), dismissed the appeal filed by the assessee.

4. The Ld.Counsel for the assessee submitted that the Ld.CIT(A) passed an ex-parte order without giving sufficient opportunity of hearing to the assessee. Therefore, the matter may be set aside to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee.

5. The Ld.DR strongly opposed for setting aside the issue to the file of the Ld.CIT(A) on the ground that the issue involved in the present appeal is disallowance of employees contribution to PF u/s.36(1)(va) of the Act, and said issue is covered against the assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT in Civil Appeal No.2899 of 2016 dated 12.10.2022 and thus, the appeal may be decided by the Tribunal without setting aside to the file of the Ld.CIT(A).

6. We have heard both the parties, and perused the materials available on record. We find that the Ld.CIT(A) disposed off appeal filed by the assessee ex-parte for non-prosecution of appeal. No doubt, the appellate authorities should dispose off appeal filed by the assessee, even in a case, where the assessee does not prosecute his/her appeal, but such appeal should be disposed off on the basis of materials available on record. In this case, the Ld.CIT(A) disposed off appeal filed by the assessee on technical grounds for non-prosecution. However, not discussed the issues on merits.

:: 4 ::

Therefore, we are of the considered view that the matter needs to be set aside to the file of the Ld.CIT(A) to give one more opportunity of hearing to the assessee and thus, we set aside the order of the Ld.CIT(A) and restore the issue to the file of the Ld.CIT(A) and direct the Ld.CIT(A) consider the issue involved in this appeal on merits after affording an opportunity of hearing to the assessee.

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

Order pronounced on the 08th day of March, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 08th March, 2023.

TLN

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF