

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH , ACCOUNTANT MEMBER
आअसं.2265/मुं/ 2021(नि.व. 2019-20)
ITA NO. 2265/MUM/2021(A.Y.2019-20)

Smt. Preamsheela Devi Ranjeet Singh,
2nd Floor, Gala No.202,
Hasti Industrial Premises, Plot No.798,
MIDC Area, MIDC,
Navi Mumbai 400 710
PAN: CZNPS-0590-R

..... अपीलार्थी /Appellant

बनाम Vs.

Assistance Director of Income Tax (CPC),
Centralised Processing Center,
Bengaluru – 560 500

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Abhishek Kumar Singh

सुनवाई की तिथि/ Date of hearing : 09/03/2023

घोषणा की तिथि/ Date of pronouncement : 10/03/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short ' the CIT(A) '] dated 12/10/2021 for the assessment year 2019-20.

2. The solitary issue raised by the assessee in appeal is against disallowance of payment of PF and ESIC u/s. 36(1)(va) of the Income Tax Act, 1961 [in short 'the Act'].

3. The notice of hearing of appeal was sent to the assessee through RPAD. The notice of hearing was sent to the assessee on the address mentioned in Form No.36. The notice is deemed to be served as the notice has not been received back unserved from the Postal Authorities. Despite service of notice neither the assessee nor any Authorized Representative of the assessee is present in the Court today. Therefore, this appeal is taken up for hearing with the assistance of Id. Departmental Representative and material available on record.

4. The assessee filed the return of income u/s. 139(1) of the Act on 26/10/2019. Return of the assessee was processed u/s.143(1) of the Act and intimation was issued to the assessee on 21/02/2020. While processing the return of income the Centralized Processing Center(CPC) disallowed assessee's claim of deduction in respect of delayed payment of PF and ESIC.

4.1 Aggrieved against the order dated 21/02/2020, the assessee filed appeal before the CIT(A). The contention of the assessee before the First Appellate Authority was that the delay in payment of PF and ESIC is under the respective Act, however, the amount of PF and ESIC was deposited before filing the return of income u/s. 139(1) of the Act, hence the same is allowable u/s. 43B of the Act. The CIT(A) placing reliance on Explanation – 5 to section 43B of the Act and Explanation – 2 to section 36(1)(vi) inserted by the Finance Act, 2021, dismissed the appeal of assessee .

5. The assessee is in appeal before the Tribunal assailing the findings of CIT(A). From perusal of the ground raised before the Tribunal it emanates that the assessee has assailed the findings of CIT(A) primarily on two issues:

(i) The amendment brought by Finance Act, 2021 by way of insertion of Explanation -5 to section 43B of the Act is prospective.

(ii) The issue is covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Ghatge Patil Transport Ltd., 368 ITR 749 (Bom).

6. We have heard the submissions made by Ld. Departmental Representative and have examined the orders of authorities below. We find that it is an admitted position that the assessee had deposited PF and ESIC dues before filing return of income for the impugned assessment year, but after the due date under the respective Acts. The Hon'ble Apex Court in the case Checkmate Services Pvt. Ltd. vs. CIT, 143 taxmann.com 178 has held that provisions of section 43B could not be applied in case of amounts which were deducted from employee's income as contribution and were held in trust by the employer. The non-obstante clause u/s. 43B would also not absolve the assessee employer from its liability to deposit employee's contribution on or before due date.

Thus, we deem it appropriate to restore this issue back to the file of Assessing Officer to decide the issue in accordance with the aforesaid decision of Hon'ble Apex Court and facts of the case. The appeal by the assessee is thus, allowed for statistical purpose.

Order pronounced in the open court on Friday the 10th day of March 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 10/03/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai