

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.31/Asr/2022  
Assessment Year: 2018-19**

Khyber Industries (P) Ltd. 1, Near Hyderpora Flyover, Bye Pass Hyderpora, Srinagar (J & K). [PAN:AAACK7457J]  (Appellant)	Vs.	Central Processing Centre Income Tax Department, Bangalore. 560500.  (Respondent)
---	-----	---

<b>Appellant by</b>	Sh. P. K. Misra, CA
<b>Respondent by</b>	Sh. Prashant Singh, Sr. DR

<b>Date of Hearing</b>	15.03.2023
<b>Date of Pronouncement</b>	21.03.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id.  
Commissioner of Income Tax (Appeals) NFAC, Delhi,[in brevity the 'CIT (A)']

order passed u/s 250 of the Income Tax Act 1961, for A.Y. 2018-19. The impugned order was emanated from the order of the CPC, Bangalore, order passed u/s 143(1) of the Act date of order 12.01.2020.

The assessee has taken the following grounds:-

*“1. That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.*

*2. That the learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts and in the circumstances of the case in sustaining the disallowance of Rs. 83, 21, 928/- invoking the provisions of section 36(1) (va) read with section 2(24) (x) on account of employees contribution to PF/ESI deposited beyond the due date prescribed under the said Acts though the same had been deposited before the due date of filing of return of income.*

*3. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 83,21,928/- ignoring the settled law on the subject that PF/ESI contribution paid after the due date under the respective Acts but before filing of the return of income u/s 139(1) cannot be disallowed u/s 43B or u/s 36(1) (va) of the Income Tax Act, 1961.*

*4. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of Rs. 83,21,928/- relying on the amendment made to section 36(1) (va) by Finance Act, 2021 holding the same to be clarificatory ignoring the fact that the said amendment was applicable prospectively i.e. Assessment Year 2021-22 and subsequent assessment years only.*

*5. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the calculation of book profit u/s 115JB (for MAT calculation) at Rs. 16,65,16,172/- (after adding deferred tax provision of Rs. 2,92,01,795/-) which had already been considered by the appellant while offering book profit u/s 115JB in the return of income at Rs. 13,73,14,377/- (i.e after considering the deferred tax provision of Rs. 2,92,01,795/-).*

*6. The above grounds of appeal are without prejudice to each other.*

*7. The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal.”*

2. Assessee has filed an application for condonation of delay of 03 days wherein, assessee has stated that delay due to time taken by the postal department

to deliver the documents and was interrupted internet facility in the Kashmir Valley which was beyond the control of the appellant. The Id. Sr Dr has not made any objection. Therefore, the delay of 03 days is condoned.

3. Brief fact of the case is that the assessee is a company and filed the return. The addition was made by disallowance u/s 36(1) (va) and the addition of 'Deferred tax provision' amount of Rs.2,92,01,795/-. The entire addition was made during the processing of return u/s 143(1). Aggrieved assessee filed an appeal before the Id. CIT(A) by challenging the order u/s 143(1). But assessee remained unsuccessful. Being dissatisfied assessee had challenged the order of the Id. CIT(A) before us.

4. The Id. counsel for the assessee first invited our attention in grounds of appeal and mentioned that ground no. 1 is general in nature. Ground Nos. 2 to 4 was limited to delay payment of PF and ESI violation of provision of section 36(1)(va) which was squarely covered by the judgment of the Hon'ble Apex Court in the case of **Checkmate Services P. Ltd. Vs CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022)**, [2022] 143 taxmann.com 178 (SC). So, ground nos. 2 to 4 are not pressed.

4.1 The ld. counsel for the assessee only challenged ground no. 5 for doubly addition of the 'deferred tax amount' of Rs.2,92,01,795/-. The ld. counsel placed the calculation of book profit u/s 115JB of the Act where in ITR-6, the calculation was duly annexed **APB page nos. 16 to 17**. The calculation is duly reproduced as below:

ITA No. : 31 / ASR / 2022

**CALCULATION OF BOOK PROFIT UNDER SECTION 115JB**

**As reported in ITR – 6 (APB – 24 to 25)**

Profit after tax as per statement of Profit & Loss		7,01,12,582/-
Add: Provision for Income tax	3,80,00,000/-	
Add: Depreciation	7,74,14,774/-	
Add: Deferred tax provision	2,92,01,795/-	
	-----	10,66,16,569/-
Total Additions		14,46,16,569/-
	Sub Total	21,47,29,151/-
Less: Depreciation		7,74,14,774/-
<b>Book Profit u/s 115JB for MAT</b>		<b>13,73,14,377/-</b>

A. Deemed total income u/s 115JB (As computed u/s 143(1))	Rs. 16,65,16,172/-
B. Book Profit u/s 115JB reported in return of income (internal page 61 to 63 of ITR – 6 filed )	Rs. 13,73,14,377/-
Difference -Deferred tax provision (Considered twice In intimation u/s 143(1)) (A – B)	Rs. 2,92,01,795/-

4.2 The counsel for the assessee further mentioned that during processing of return u/s 143(1) the deferred tax was further added back by the ld. AO. During computation of total income, the assessee already added back the 'deferred tax provision' u/s 115JB of the Act.

5. The Id. Sr. DR fully relied on the order of the revenue authorities and invited our attention in order of the Id. CIT(A) para 5.16 page 18 which is reproduced as below:

*“5.16 Ground No 3: This ground pertains to addition of provision of deferred tax for computation of Book Profit for MAT under Section 115JB.*

*After amendment in Section 115JB by Finance Act, 2008 a specific clause has been inserted at (h) related to Amount of Deferred Tax in Profit and Loss A/c. After this amendment following effect has to be given for deferred tax:*

*a) Increased the book profit by the amount of Deferred Tax and Provision thereof*

*b) Reduced the book profit by the amount of deferred tax, if any such amount is credited to the profit and loss account.*

*Hence After this amendment deferred tax has to be considered for calculation of book profit and in same manner as prescribed in section 115JB. The Book Profit has been correctly increased by the amount of deferred tax. The ground raised is dismissed.”*

6. We heard the rival submission and relied on the documents available on the record. From the calculation it is very clear that the addition made by ‘deferred tax provision’ amount of Rs.2,92,01,795/- with the profit during calculation of book

profit u/s 115JB. The amount was already reflected in the return of income which has already mentioned in the ITR-6. Only the plea of the ld. counsel was that the same amount can be taxed doubly during processing of return. The ld. CIT(A) in the order has not taken the issue on basis of the provision under act not under factual matrix. Only, the provisions are mentioned in the order of the appeal. We remit back the issue to ld. AO and allow the proper computation of the Book Profit related to 'Defer tax provision' and the same amount cannot be taxed doubly during the computation of income by the revenue. Needless to say, the assessee should get a reasonable opportunity of hearing during set aside proceeding before the ld. AO.

7. Considering the above discussion, Ground no-1, 6 & 7 are general in nature. Ground no- 2 to 4 are not pressed. Ground no-5 is allowed for statistical purpose.

8. In the result, the appeal of the assessee bearing **ITA No. 31/Asr/2022** is partly allowed.

**Order pronounced in the open court on 21.03.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order