

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : B : NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1013/Del/2022  
Assessment Year: 2017-18

Harcharan Dass Gupta,  
103, Sai Bhawan,  
Commercial Complex,  
Ranjeet Nagar,  
New Delhi – 110 008.

Vs. DCIT,  
Circle-62(1),  
Delhi.

PAN: AACFH1981P

(Appellant)

(Respondent)

Assessee by	:	Ms Mansi Jain, CA
Revenue by	:	Shri Pankaj Khanna, Sr. DR
Date of Hearing	:	27.02.2023
Date of Pronouncement	:	24.03.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 28.03.2022 of the CIT(A)-29, New Delhi, relating to Assessment Year 2017-18.

2. The Id. AR submitted that the assessee does not want to press ground No.1, hence, ground No.1 of the assessee is dismissed. The remaining effective grounds of the assessee read as under:-

*"2. The Ld. AO erred in law and on facts in making and the Ld. CIT(A) erred in confirming the addition of Rs.15120/- being the amount of provident fund contributed by employees deposited beyond due date under PF Act but within due date of filing return of income u/s 139 (1) in the facts and circumstances of the case.*

3. *The Ld. AO erred in law and on facts in making and the Ld. CIT(A) erred in confirming the addition of Rs.7237/- being interest paid on late payment of TDS u/s 37 of the Income Tax Act, 1961 in the facts and circumstances of the case. The addition was not justified in view of the fact that the assessee had itself added back the amount in its computation of income.*

4. *The Ld. AO erred in law and on facts in making and the Ld. CIT(A) erred in confirming the addition of Rs. 1500000/- being capital contribution made by the partner u/s 68 of the Income Tax Act, 1961 in the facts and circumstances of the case. The partner Sh. Lalit Mittal had explained the source of capital contribution during assessment proceedings.*

5. *The Ld. AO erred in law and on facts in not properly appreciating the explanation of the assessee and making addition of Rs. 1500000/- u/s 68 against the provisions of law. The Ld. CIT(A) erred in law and on facts in confirming the addition in the facts and circumstances of the case. The assessee had duly explained the nature and source of credits in the capital accounts of partners. All the three ingredients of section 68 had been fully satisfied."*

Ground No.2:

3. Apropos ground No.2, the Id. Counsel of the assessee submitted that the assessee deposited the amount of provident fund contributed by employees beyond the due date, but, within the due date of filing the return of income u/s 139 (1) of the Act. Therefore, the claim of the assessee in this regard may kindly be allowed.

4. Replying to the above, the Id. Sr. DR submitted that the issue is covered by the judgement of the Hon'ble Supreme Court in the case *Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC)*.

5. On careful consideration of the rival submissions, we find that the issue towards taxability of belated employees contribution to Provident Fund/ESIC is no longer *res integra* in the light of the judgement of the Hon'ble Supreme Court in the

case of *Checkmate Services (P.) Ltd. vs CIT* (supra). The co-ordinate Bench of the Tribunal in *Cemetile Industries vs ITO* (supra) had expressed a view that such adjustment/disallowance is also permissible in the proceedings carried out u/s 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in *Savleen Kaur & Others vs ITO in ITA No.2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023* and in *Data Glove IT Solutions Private Limited vs. ITO in ITA No.994/Del/2021 for Assessment Year 2018-19 vide order dated 15.02.2023* has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-ordinate Benches, we do not see any merit in the appeal of the assessee. We thus, do not see any valid reason to interfere with the order of Ld.CIT(A). Accordingly, ground No.2 of the assessee is dismissed.

Ground No.3:

6. Apropos ground No.3, the Id. AR submitted that the AO has erred in making addition on account of interest paid on late TDS u/s 37 of the Act. Therefore, the same may kindly be allowed to the assessee.

7. Replying to the above, the Id. Sr. DR submitted that the interest paid u/s 201(1A) r.w.s. 206C(7) of the Act for delayed payment of TDS/TCS has to be allowed and added back to the total income of the assessee as the interest paid takes the colour from the nature of principal amount required to be paid, but, not paid within time. Therefore, the AO was right in making the addition. The Id. Sr. DR also submitted that despite numerous opportunities to the assessee, no reply was filed by the assessee in his favour controverting the disallowance made by the AO. Therefore,

the authorities below were right in making and sustaining the addition in the hands of the assessee.

8. On careful consideration of the above submissions, we are of the considered view that the interest paid by the assessee u/s 201(1A) r.w.s. 206C(7) of the Act cannot be held as penal in nature and, thus, incurred out of commercial expediency and, therefore, is allowable u/s 37 of the Act. The AO is directed to delete the addition. Accordingly ground No.2 of the assessee is allowed.

Grounds No.4 & 5:

9. Apropos grounds No.4 and 5, the Id. AR submitted that the AO has erred in law and on facts in making the addition and the Id.CIT(A) has also erred in confirming the addition of Rs.15 lakh being capital contribution made by the partner Shri Lalit Mittal u/s 68 of the Act treating the same as unexplained credit in the hands of the assessee. The Id. AR strenuously contended that the assessee had duly explained the nature and source of credit in the capital accounts of partners and all three ingredients of section 68 had been fully satisfied by explaining the identity and credit worthiness of capital contributing partner and genuineness of transactions, but, despite the plausible explanation filed by the assessee, the AO made addition and the Id.CIT(A) was not correct and justified in upholding the same. The Id. AR also pointed out that when the assessee partnership firm has properly explained that the impugned amount was capital contribution by one partners Shri Lalit Mittal and the partner explained the source of capital contribution during assessment proceedings, then, no addition is called for in the hands of the assessee firm in this regard. The Id. AR submitted that in case the AO has any doubt, then, he can verify and examine the

case of contributing partner and no addition is called for in the hands of the assessee firm.

10. On careful consideration of the above rival submissions, we are of the considered view that when the partnership assessee firm explained the source of capital introduced by one of the partners Shri Lalit Mittal and the said partner also explained the source of capital contribution during the assessment proceedings, then, without bringing out any positive or adverse material against the assessee, no addition can be made in the hands of the assessee partnership firm. Accordingly, we hold that the addition made by the AO and upheld by the Id.CIT(A) is not valid and sustainable. Therefore, we direct the AO to delete the same. Accordingly grounds No.4 and 5 of the assessee are allowed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24.03.2023.

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Dated:24<sup>th</sup> March, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi