

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : H : DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.1301/Del/2021
Assessment Year: 2018-19

Pooja Metal Processors Pvt Ltd., Vs DCIT,
Plot No.89, CPC,
DLF Industrial Estate Phase I, Bangalore.
Anangpur,
Faridabad – 121 003.

PAN: AAACP9084G

(Appellant)

(Respondent)

Assessee by : Shri P.K. Mishra, CA
Revenue by : Ms Princy Singhla, Sr. DR

Date of Hearing : 10.05.2023
Date of Pronouncement : 19.05.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.1301/Del/2021 for AY 2018-19 arises out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in DIN & Order No.ITBA/NFAC/S/250/2021-22/1034567083(1) dated 02.08.2021 against the order of assessment passed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 17.05.2019 by the Id. Assessing Officer, CPC (hereinafter referred to as 'Id. AO').

2. The first issue to be decided in this appeal is as to whether the Id.CIT(A) was justified in confirming the disallowance made on account of employee's contribution to Provident Fund/Employees' State Insurance Scheme (PF/ESI) which was not deposited till the due date prescribed under the respective Acts, but, were duly remitted to the account of the Government on or before the due date of filing the return of income u/s 139 (1) of the Act.

3. We have heard the rival submissions and perused the material available on record. At the outset, this issue is no longer *res integra* in view of the decision of the Hon'ble Supreme court in the case of ***Checkmate Services Pvt. Ltd vs CIT reported in 448 ITR 518***. It is not in dispute that the employee's contribution to PF and ESI were deposited by the assessee to the Government account beyond the due dates prescribed under the respective acts but well before the due date of filing of return of income u/s. 139(1) of the Act. We find that the recent decision of the Hon'ble Supreme Court had settled the entire dispute to rest by deciding it in favour of the Revenue.

4. Pursuant to the aforesaid decision of the Hon'ble Supreme Court, the claim of deduction towards employee's contribution to PF & ESI made by the assessee becomes an incorrect claim warranting prima facie adjustment u/s.143(1) of the Act.

5. Respectfully following the decision of the Hon'ble Supreme Court referred to supra, we decide the issue against the assessee.

6. The last issue to be decided in this appeal is as to whether the Id.CIT(A) was justified in confirming the addition of Rs.3,87,151/- representing the gain on sale of fixed assets in the facts and circumstances of the instant case.

7. We have heard the rival submissions and perused the material available on record. It is not in dispute that during the year under consideration, the assessee disposed of its part of plant & machinery for Rs.21,88,000/- which had a written down value of Rs.18,00,849/- as per the Companies Act. Accordingly, there was a gain of Rs.3,87,151/- (Rs.21,88,000/- (-) Rs.18,00,849/-) which though credited in the Profit & Loss Account, was claimed as deduction in the computation of total income by the assessee. This was claimed as deduction in view of the fact that the entire sale consideration figure of Rs.21,88,000/- was reduced from the block of assets by the assessee while computing income-tax depreciation u/s 32 of the Act. In other words, the plea of the assessee was that since the sale consideration of Rs.21,88,000/- was reduced from the block of assets and depreciation claimed by the assessee on the remaining value of the WDV thereon after reducing the sale consideration, the gain arising on account of sale of fixed assets in the sum of Rs.3,87,151/- in the books, would not be liable to tax. This plea was not accepted by the Id. AO and by the Id.CIT(A) and, accordingly, it had resulted in an addition of Rs.3,87,151/- in the hands of the assessee.

8. We have gone through the income-tax depreciation schedule. We find that the assessee had indeed reduced the sale consideration figure of Rs.21,88,000/- in the plant & machinery block of 15% and had claimed depreciation u/s 32 of the Act on the remaining value thereon. This computation of depreciation is strictly in consonance with the provisions of section 32 read with section 43 of the Act. We do not find any infirmity either in the computation made by the assessee in the income-tax depreciation schedule. The gain of Rs.3,87,151/- on sale of fixed assets arose in the books of accounts of the assessee company only. That has absolutely nothing to do with the provisions of the Income-tax Act. Moreover, the written down value of the plant & machinery as per the Companies Act and written down value of plant & machinery as per the Income-tax Act would obviously be different, in view of the change in rates of depreciation provided under the Companies Act and Income-tax

Act. We find that the lower authorities had not appreciated this specific fact and had misunderstood the provisions of the Income-tax Act while confirming this addition. Hence, we deem it fit to delete the addition made in the sum of Rs.3,87,151/-. Accordingly, this issue is decided in favour of the assessee.

9. The other grounds raised by the assessee are general in nature and does not require any specific adjudication.

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

Order pronounced in the open court on 19.05.2023.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19th May, 2023.

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

Asstt. Registrar, ITAT, New Delhi