

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.332/Bang/2023
Assessment Year: 2020-21

S.N. Thakur M/s. Spartan Security Services No.217, 6 th Main, Vinayaka Nagar Bengaluru 560 063 PAN NO : AHIPT7492A	Vs.	Deputy Commissioner of Income-tax CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sumangala Ranga, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Department.

Date of Hearing	:	25.05.2023
Date of Pronouncement	:	25.05.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of passed by NFAC for the assessment year 2020-21 dated 28.2.2023 u/s 250 of the Income-tax Act,1961 [‘the Act’ for short].

2. First ground in this appeal is with regard to addition amounting to Rs.4,10,770/- to the returned income u/s 143(1) of the Act on account of Employees’ portion of contribution to ESI & PF and Employer’s contribution of ESI & PF and GST liability. Although the said amount was paid before the due date of filing return of income

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u/s 131 of the Act for the assessment year 2020-21 and therefore, deduction was allowable u/s 36(1)(va) r.w.s. 43B of the Act as applicable to the relevant assessment year.

3. Facts of the case are that the CPC while processing the return u/s 143(1) of the Act disallowed the following:

a) Employees' contribution of ESI & PF	Rs.1,01,643/-
b) Employer's contribution of ESI & PF	Rs.1,90,311/-
c) GST liability	<u>Rs.1,18,816/-</u>
Total:	<u>Rs.4,10,770/-</u>

3.1 The ld. A.R. submitted that the above amounts have been paid before the due date of filing the return of income u/s 139(1) of the Act and same to be allowed.

4. After hearing both the parties, we are of the opinion that the issue relating to depositing of employees' contribution of ESI & PF came for consideration before Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT reported in 440 ITR 518, wherein held that for assessment year prior to 2021-22, non-absentee clause u/s 43B of the Act could not apply in case of amounts, which are held in Trust as was case of employees' contribution which are deducted from their income from the employees' income and was held in Trust by assessee employer as per section 2(24)(x) of the Act, thus, said clause will not absolve assessee employer from is liability to deposit employees' contribution on or before due date as required in respective Act. In view of the above, the employees' contribution towards ESI & PF made after due date mentioned in respective Act to be disallowed. On this cunt, we do not find any merit in the argument of assessee's counsel. With

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regard to employer's share of ESI & PF contribution, the amount paid on or before due date of filing of return of income u/s 139(1) of the Act to be allowed. Ordered accordingly.

4.1. With regard to payment of GST liability before due date of filing return of income u/s 139(1) of the Act, this issue came for consideration before this coordinate bench in case of Jain Christopher Vs. Deputy Commissioner of Income-tax in ITA No.855/Bang/2012 vide order dated 12.4.2013, wherein held that "service tax not paid within the due date of filing of return of income cannot be allowed."

4.2 Further, Delhi Bench of Tribunal in the case of Hemkunt Infotech Pvt. Ltd. in ITA No.6683/Del/2017 dated 23.3.2018 held as under:

"14. Now, we have to examine the case of the assessee in the light of the above provisions. During the impugned year, the assessee has credit balance of service tax payable as on 31.03.2013 of Rs.1,16,09,924/- which was to be paid upto 31.03.2013 by the assessee, but he did not pay. Further, the assessee had paid a sum of Rs.30,83,457/- before filing of IT return. As per section 43B(a), the above outstanding payment was to be paid upto the date of filing of return of income. As per method of accounting, the assessee has also not included the service tax received by him in the turnover. In fact, the assessee was legally obliged to declare its turnover inclusive of service tax received. The assessee cannot be exonerated from its liability by saying that he accounted for the service tax received separately. Since the assessee did not pay service tax as contemplated u/s. 43B(a) and as per above provisions of Service Tax Act within the stipulated time, therefore, the ld. CIT(A) has rightly disallowed the same u/s. 43B of the IT Act. The case laws relied by the assessee are based on different footings as in all the decisions it was held that Service Tax was not at all payable because the service Tax was not received from the customer. The law prevailing at that particular time was that Service Tax was to be paid to the Government only when Service Tax is received from the service receiver to the service provider. Subsequently, there is change in the law which provides that Service Tax is to be deposited by the service provider even if service tax is not paid by the service receiver to the service provider. Therefore, in all those decisions it was held that service tax outstanding is hit by the provisions of Section 43B of the Income Tax Act, 1961. Due to the change in the law now those decisions does not help to the assessee. Moreover, the assessee has filed the service tax returns belatedly, i.e., for April to June on

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16.04.2015, for July to September and half yearly from October to March, 2013 on 08.07.2015. In view of all these facts, the ld. CIT(A) has rightly dealt with the issue in question by giving elaborate findings in the impugned order regarding confirmation of addition u/s. 43B of the Act, which we do not find fit to be interfered with. Accordingly, the appeal of the assessee deserves to be dismissed.”

4.3. In view of the above, GST liability is paid within the due date of filing the return of income to be allowed while processing return u/s 143(1) of the Act.

4.4. The ld. D.R. relied on the order of the Tribunal in the case of Husna Parveen in ITA No.3/VNS/2020 dated 25.8.2022. In that case, the Tribunal decided the issue against the assessee on the reason that GST liability was not paid within the due date of filing the return of income u/s 139(1) of the Act.

5. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 25th May, 2023

Sd/-
(Mahavir Singh)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 25th May, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**