

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C(SMC)" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 278 & 279/Kol/2023
Assessment Year: 2018-19

Bhola Singh Singh Enterprise 2, Netaji Park Lichu Bagan, Bandel Hooghly - 712123 [PAN : AOXPS1479N]	Vs	Income Tax Officer, Ward-24(1), Hooghly
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख / **Date of Hearing** : 16/05/2023
घोषणा की तारीख / **Date of Pronouncement**: 30/05/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

These are two appeals related to Assessment Year 2018-19. ITA No. 278/Kol/2023 is against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the 'Id. CIT(A)'), dt. 17/03/2023 arising out of the order u/s 143(3) of the Act, dt. 25/10/2019 and in ITA No. 279/Kol/2023 is against the order of the Id. CIT(A) dt. 15/03/2023, arising out of the order u/s 154 of the Act, dt. 11/05/2021.

2. The common issue raised in both these appeal are firstly the disallowance u/s 43B of the Act at Rs. 4,38,526/- on account of non-payment of outstanding amount of ESI, PF, CGST and SGST not paid before the due date of filing of return of income and the second issues is disallowance employees' contribution made towards PF amounting to Rs.61,387/-.

3. At the outset, the Id. Counsel for the assessee submitted that since the issues raised are common and pertaining to the same Assessment Year, assessee is not wishing to press ITA No. 279/Kol/2023 which is arising out of the order u/s 154 of the Act dt. 11/05/2021. Since the same has not been pressed, the same is dismissed as not pressed.

4. As regards ITA No. 278/Kol/2023 is concerned, Id. Counsel for the assessee submitted that as regards the disallowance u/s 43B of the Act at Rs.4,38,526/- there was a wrong reporting by the tax auditor even though the alleged sum has been paid before the due date of filing of the return the same has been reported against the column 26(i)(B)(b), which is meant for the sum referred to u/s 43B of the Act which was incurred during the year but not paid on or before the due date of filing of the return u/s 139(1) of the Act. However, since the alleged sum has been paid before the due date of return u/s 139 of the Act, no disallowance was called for u/s 43B of the Act.

5. So far as the second issue is concerned, regarding employees' contribution to PF amounting to Rs.61,387/-, it was submitted that wages were disbursed in the month of May and June, 2017 and the due date for the said payment was 15th of the next month but the amount was paid before the due date, therefore, the disallowance is uncalled for.

6. On the other hand, the Id. D/R supported the order of the lower authorities.

7. We have heard the rival contentions and perused the material available on record.

8. As far as the first issue of disallowance u/s 43B of the Act at Rs.4,38,526/- is concerned, the alleged sum comprised of liabilities payable towards ESI, PF, CGST and SGST for the month of March, 2017. The

assessee was required to deposit these amounts before the due date of filing of return u/s 139(1) of the Act so that provisions of Section 43B of the Act do not come into operation. From the details filed by the assessee in the paper book containing the bank statement, we notice that the alleged sum has been paid before the due date of furnishing return u/s 139(1) of the Act. The detail of the same is reproduced below:-

<i>Particulars</i>	<i>Month</i>	<i>Amount (in Rs.)</i>	<i>Date of payment</i>
<i>ESI Payable</i>	<i>March 2017</i>	<i>49,901</i>	<i>12.04.2018</i>
<i>EPF Payable</i>	<i>March 2017</i>	<i>1,19,225</i>	<i>12.04.2018</i>
<i>CGST Payable</i>	<i>March 2017</i>	<i>1,34,705</i>	<i>14.05.2018</i>
<i>SGST Payable</i>	<i>March 2017</i>	<i>1,34,705</i>	<i>14.05.2018</i>

9. The above details of the payments are duly verifiable from the bank statement. So, undisputedly Section 43B of the Act cannot be invoked for the above stated payments and, therefore, we find merit in the contention of the Id. Counsel for the assessee for the inadvertent mistake committed by the tax auditor by reporting the detail of expenses payable as on March, 2017 on which provisions of Section 43B of the Act can be invoked have been wrongly reported in the column 26(i)(B)(b) in Form 3CB attached to the tax audit report, which is meant for those payments which fall under the provisions of Section 43B of the Act and are not deposited before the due date of filing of return. However, considering the fact that on the alleged sum of Rs.4,38,526/-, provisions of Section 43B of the Act are not applicable as they have been paid before the due date of filing u/s 139(1) of the Act, the said disallowance deserves to be deleted. Hence, we set aside the finding of the Id. CIT(A) and allow the ground raised by the assessee and thus delete the addition of Rs. 4,38,526/-.

10. As far as the second issue is concerned, we notice that a sum of Rs.29,940/- and Rs.31,447/- was employees' contribution towards PF for the

months of April and May, 2017. Though the assessee has claimed that wages were disbursed in the month of May and June, 2017 i.e., subsequent month for which wages were payable and thus claimed that due dates were subsequent to the months of payments and thus there is no delay.

11. We, however, fail to find any merit in this contention of the assessee as the liability to pay PF /ESI fall due on the basis of month for which salary is payable. Now, considering the month for which wages are payable the due date for depositing the said sum was 15/06/2017 and 15/07/2017. However, the payment has been made on 18/05/2017 and 17/06/2017, which is after the due dates. Recently, the Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act,1961.*" Accordingly, the sum is not allowable u/s 36(1)(va) of the Act and is deemed to be income u/s 2(24)(x) of the Act. Accordingly, we dismiss this ground raised by the assessee.

12. In the result appeal of the assessee in ITA No. 278/Kol/2023 is dismissed and in ITA No. 279/Kol/2023 is partly allowed as per terms indicated above.

Order pronounced in the Court on 30th May, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 30/05/2023

**SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata