

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2882/Mum/2022
(Assessment Year: 2018-19)

Apcer Life Sciences India Limited G-040, Vikas Centre, 104, S V Road, Santacruz (W), Mumbai-400 054	Vs.	Assessing Officer National E-Assessment Centre, Delhi
PAN/GIR No. AAHCA 6482 E		
(Appellant)	:	(Respondent)
Assessee by	:	Shri M. Subramanian
Revenue by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	02.03.2023
Date of Pronouncement	:	31.05.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has challenged the disallowance of Rs.40,91,032/- which is the delayed deposits towards PF & ESI u/s. 36(1)(va) r.w.s. 43B of the Act on the ground that the said provision was prospective in nature and applicable to A.Y. 2021-22. The assessee has also challenged the disallowance of Rs.35,80,210/- u/s. 115BBE of the Act. The assessee is said to have raised the additional grounds vide its submission stating that the computation sheet dated 19.04.2021, computing the income at Rs.11,93,40,332/- is

invalid and bad in law along with the demand notice issued on 19.04.2021 u/s. 156 of the Act. The assessee has also raised the additional grounds which are consequential in nature.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of pharma co-vigilance services and monitoring the effect of drug, medical review of lab and ECG data, global medical writing, etc. The assessee filed its return of income dated 21.11.2018, declaring total income at Rs.11,52,49,300/-. The return was processed u/s. 143(1) of the Act and the assessee's case was selected for scrutiny and the assessment order dated 19.04.2021 was passed u/s. 143(3) r.w.s. 144B of the Act, accepting the returned income filed by the assessee. It is observed that the demand notice and the computation sheet was issued separately along with the assessment order and credit of all prepaid taxes were given as per the provisions. The assessee observed that the assessee had filed its return declaring total income at Rs.11,52,49,300/- in the computation sheet, whereas the A.O. has computed the taxable total income at Rs.11,93,40,332/- with a difference of Rs.40,91,032/- higher than the total taxable income as per the return of income filed by the assessee. The assessee further contended that the A.O. has not mentioned about the impugned disallowance at the time of processing the ITR u/s. 143(1) of the Act.

4. The assessee was in appeal before the Id. CIT(A), challenging the impugned disallowance u/s. 36(1)(va) of the Act and in computing the tax of Rs.35,80,210/- as additional tax u/s. 115BBE of the Act. The Id. CIT(A) confirmed the impugned disallowance on the ground that the assessee has deposited the employees contribution

towards PF & ESI after the due date prescribed under the relevant Acts. The Id. CIT(A) also confirmed the addition on deemed income u/s.115BBE of the Act of Rs.35,80,210/- on the ground that the assessee has failed to furnish a complete copy of the AO/CPC's order u/s. 143(1) of the Act inspite of several opportunities and the Id. CIT(A) also held that the assessee has failed to furnish the copies of the judgments relied upon by the assessee on this issue.

5. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

6. The assessee filed the additional grounds stating that the computation sheet dated 19.04.2021 was invalid and the demand notice u/s. 156 of the Act was issued consequent to the computation sheet was also invalid and bad in law along with the other consequential grounds raised. The assessee contends that the additional ground raised by it goes to the root of the matter, the same has to be admitted by placing reliance on the decision of the Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. vs. CIT* [1998] 229 ITR 383 (SC).

7. On hearing both the sides, we are of the considered view that the additional ground raised by the assessee has to be admitted for the purpose of proper adjudication of the present case. Hence, we hereby admit the additional grounds raised by the assessee.

8. We first take up the additional ground raised by the assessee challenging the computation sheet dated 19.04.2021 raised in the additional ground nos. 1, 2 & 3 of the assessee submission. The learned Authorised Representative (Id. AR for short) for the assessee contended that the return of income filed by the assessee was accepted by the

A.O. in the assessment order dated 19.04.2021. The Id. AR further stated that the assessee has claimed certain refunds and had declared total income of Rs.11,52,49,300/- in its return of income whereas at pg. no. 26 of the computation sheet, the A.O. has determined the total income at Rs.11,93,40,332/- with a difference of Rs.40,91,032/-. The Id. AR contended that the A.O. has not made any disallowance to this extent in his assessment order and since there was no explanation in the assessment order to that extent, the computation sheet has to be declared as 'invalid' and 'bad in law'.

9. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said fact and relied on the order of the lower authorities.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee for the first time has raised this plea before us which was not taken before the first appellate authority. The Id. CIT(A) has specifically mentioned that the assessee has made delayed deposits of employees contribution to PF & ESI aggregating to Rs.40,91,032/- as evident from the column 20(b) of the audit report as well as the CPC/A.O.'s intimation u/s. 143(1) of the Act that the impugned disallowance was towards delayed deposits of employees contribution towards PF & ESI, which were said to be deposited after due date specified under the relevant Acts and but before the due date of filing of the returns u/s. 139(1) of the Act. This issue is no longer *res integra* as the same is covered by the decision of the Hon'ble Apex Court in the case of *Checkmate Services (P) Ltd. vs. CIT* [2022] 448 ITR 518 (SC), wherein it was held that the delayed payment of employees contribution towards PF & ESI, if the same was paid after the due date specified under the relevant act inspite of the same being paid

before the due date of filing of the returns u/s. 39(1) of the Act. Hence, we find no merit in the submission of the Id. AR in this regard. We also do not find any merit in the contention raised by the assessee that the computation sheet is invalid in law when there is no explanation by the A.O. pertaining to the impugned disallowance in the assessment order. The disallowance made in section 143(1) by the CPC/A.O. is justifiable in our view. We find no infirmity in the order of the Id. CIT(A) in upholding the impugned disallowance. Further, we find merit in the submission of the Id. AR in stating that the impugned disallowance also pertains to the employer's contribution u/s. 43B of the Act. The Id. AR contended that the employees contribution in this was only to the extent of Rs.19,19,454/- which was paid on 16th April as 15th April falls on a Sunday. To this limited issue, we remand this to the file of the A.O. for verifying the fact that the impugned payment was made on or before the due date and is also remanded for bifurcating employers and employees contribution towards PF & ESI. Hence, the additional ground nos. 1, 2 & 3 and the regular ground nos. 1 & 2 are allowed for statistical purposes.

11. Ground no. 3 of the regular ground and ground no. 4 of the additional ground pertains to the additional tax of Rs.35,80,210/- u/s. 115BBE of the Act. The Id. AR contends that section 115BBE of the Act applies only when section 68, 69, 69A, 69B, 69C & 69D of the Act are invoked. The present case in hand does not come under the mandate of section 115BBE of the Act and, hence, we find merit in the submission made by the Id. AR on this issue. We, therefore, direct the A.O. to delete the impugned addition made u/s. 115BBE of the Act. This ground of appeal raised by the assessee is allowed.

12. The other additional grounds raised by the assessee are consequential in nature.
13. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31.05.2023.

Sd/-

sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated :
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai