

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.78/RPR/2023

निर्धारण वर्ष / Assessment Year : 2014-15

Dilip Construction Company
Main Road, New Market,
Dalli Rajhara, Balod (C.G.)-491 228
PAN : AADFD9426A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Bhilai (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vikram Chhabda, CA
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 31.05.2023

घोषणा की तारीख / Date of Pronouncement : 01.06.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 11.01.2023, which in turn arises from the order passed by the A.O. under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 07.12.2016 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before me:

“1. That on the facts and in the circumstances of the case and in law, the order passed by the Id. CIT(A), National, Faceless Appeal Centre u/s.250 of the Act dated 11/01/2023 is illegal and void ab, initio.

2. That on the facts and in the circumstances of the case and in law, the Id. CIT(A), National Faceless Appeal Centre has erred in making disallowance of Rs.5,44,519/- u/s 36(1)(va) r.w.s 2(24)(x) of the Income Tax Act 1961.

3. That on the facts and in the circumstances of the case and in law, the Id. CIT(A), National Faceless Appeal Centre has erred in making ad-hoc disallowance of Rs. 2,50,000/- on account of business promotion expenses.

4. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.

2. Succinctly stated, the assessee firm which is engaged in the business as that of a mining contractor/transporter had filed its

return of income for A.Y.2014-15 on 28.11.2014, declaring an income of Rs.23,34,450/-. Case of the assessee was, thereafter, selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of assessment proceedings, it was observed by the A.O that the assessee had delayed the deposits of employee's share of contribution towards Employee's Provident Fund (EPF) aggregating to Rs.5,44,519/-, as under:

SL.	MONTH	AMOUNT (Rs.)
1.	April, 2013	78,130/-
2.	May, 2013	86,447/-
3.	June, 2013	88,353/-
4.	September, 2012	78,280/-
5.	January, 2014	52,877/-
6.	April, 2013	70,098/-
7.	May, 2013	68,621/-
8.	June, 2014	21,713/-
Total		5,44,519/-

After, inter alia, making the addition of the delayed deposit of the employees share of contribution of Rs.5,44,519/- u/s.36(1)(va) r.w.s. 2(24)(x) of the Act, the A.O vide his order passed u/s.143(3) of the Act

dated 07.12.2016 determined the income of the assessee at Rs.31,28,969/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without any success. In so far the addition made by the A.O u/s.36(1)(va) r.w.s. 2(24)(x) of the Act of the delayed deposit of employees share of contribution towards EPF of Rs.5,44,519/-, the CIT(Appeals) sustained the addition made by the A.O relying on the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1, Civil Appeal No.2833 of 2016 dated 12.10.2022.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

6. I have heard the Ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

7. Shri Vikram Chhabda, Ld. Authorized Representative (for short 'AR') for the assessee at the very outset submitted that the orders of the lower authorities suffered from a perversity. Elaborating on his

contention, it was submitted by the Ld. AR that as part of the employees share of contribution towards EPF of Rs.1,88,346/- was deposited by the assessee within the grace period, i.e. period that was extended under the EPF Act, 1952 upto 20.07.2013, therefore, to the said extent, both the lower authorities had erred in making an addition u/s.36(1)(va) r.w.s. 2(24)(x) of the Act. The Ld. AR in order to buttress his aforesaid contention had taken me through the bifurcated details of the deposit of employee's share of contribution towards EPF by the assessee, viz. (i) deposits within the extended period i.e. upto 20.07.2013: Rs.1,88,346/-; and (ii) amount deposited beyond the extended time period : Rs.3,56,173/-. On the basis of his aforesaid contention, it was averred by the Ld. AR that the addition made by the A.O u/s.36(1)(va) r.w.s. 2(24)(x) of the Act of the delayed deposit of the employees share of contribution of Rs.1,88,346/-, which was been made within the extended time period under the EPF Act, 1952, could not be sustained and was liable to be struck down. The Ld. AR in order to buttress his aforesaid contention had relied upon the judgment of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (2018) 90 taxmann.com 51 (Bom.). It was submitted by the Ld. AR that the Hon'ble High Court in its aforesaid order had, inter alia, observed that as long as the payments towards labour welfare funds (ESI before them) was made by the

assessee within the grace period, the same were to be held as having been made within the period prescribed by law.

7.1 Apropos the grievance of the assessee as regards the ad-hoc disallowance of business promotion expenses amounting to Rs.2,50,000/-, it was submitted by the Ld. AR that the A.O without giving any cogent reason and pointing out any specific instance where the assessee had raised a claim for deduction of any expenditure under the aforesaid head, which was either not found to be in order; or was not incurred wholly and exclusively for the purpose of its business, had most arbitrarily on an ad-hoc basis worked out the aforesaid disallowance of Rs.2,50,000/-.

8. Shri Piyush Tripathi, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that though the issue as regards making of payments towards employees welfare funds within the grace period, had come before the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd (supra), but the aspect as to whether or not payment made within such grace/extended period was to be construed as a payment made within the "due date" prescribed under the relevant EPF Act, had not been adjudicated by the Hon'ble Apex

Court. My attention was drawn by the Ld. DR to Page 6/Para 7 of the order passed in the case of Checkmate Services Pvt. Ltd. (supra).

9. I have given a thoughtful consideration to the contentions advanced by the ld. Authorized Representatives of both the parties, and find substance in the claim of the Ld. AR. As per the audit report in Form 3CD, Page 16/Para 20b, the assessee firm had deposited employees share of contribution towards EPF amounting to Rs.1,88,346/- (supra) within the extended/grace period, i.e. upto 20.07.2013, as under:

Description		Amount		
20	b Details of contributions received from employees for various funds as referred to in section 36(1)(va):			
	Nature of fund	Sum received from employees	Due date for payment	The actual amount paid The actual date of payment to the concerned authorities
	Provident Fund	78130	2013-05-15	78130 2013-05-22
	Provident Fund	86447	2013-06-15	86447 2013-06-21
	Provident Fund	88353	2013-07-15	88353 2013-07-18
	Provident Fund	86637	2013-08-15	86637 2013-08-13
	Provident Fund	90139	2013-09-15	90139 2013-09-12
	Provident Fund	78280	2013-10-15	78280 2013-10-19
	Provident Fund	95616	2013-11-15	95616 2013-11-14
	Provident Fund	87926	2013-12-15	87926 2013-12-14
	Provident Fund	93425	2014-01-15	93425 2014-01-15
	Provident Fund	56250	2014-02-15	56250 2014-02-13
	Provident Fund	52877	2014-02-15	52877 2014-02-28
	Provident Fund	77455	2014-04-15	77455 2014-04-14
	Provident Fund	70098	2013-05-15	70098 2013-05-22
	Provident Fund	68621	2013-06-15	68621 2013-06-21
	Provident Fund	21713	2013-07-15	21713 2013-07-18
	Provident Fund	22892	2014-01-15	22892 2014-01-15
	Provident Fund	48009	2014-02-15	48009 2014-02-13
	Provident Fund	13440	2014-02-15	13440 2014-02-28
	Provident Fund	92884	2014-03-15	92884 2014-03-18
	Provident Fund	98611	2014-04-15	98611 2014-04-14
	Provident Fund	22844	2013-12-15	22844 2013-12-15
	Provident Fund	75880	2014-01-15	75880 2014-01-15
	Provident Fund	77512	2014-02-15	77512 2014-02-13
	Provident Fund	77516	2014-03-15	77516 2014-03-16
	Provident Fund	74811	2014-04-15	74811 2014-04-14

10. Controversy involved in the present appeal lies in a narrow compass, i.e. as to whether or not, the employees share of contribution towards EPF deposited by the assessee within the extended/grace period under the EPF Act, 1952 is to be construed as a payment made on or before the due date within the meaning of section 36(1)(va) of the Act?

11. Before proceeding any further, I may herein observe that the grace/extended period of 5 days that was available to the assessee for depositing other dues had been withdrawn w.e.f. February, 2016. As the deposits in the case of the assessee were made much prior to the aforesaid cut off date, i.e. February, 2016, therefore, the grace period for making respective payments was duly available to the assessee during the year under consideration.

12. As can be gathered from "Explanation 1" to Section 36(1)(va) of the Act, the term "due date" has been explained as under:

"[Explanation 1].—For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued thereunder or under any standing order, award, contract of service or otherwise."

Although the assessee as an employer is obligated to credit an employee's share of contribution to the employee's account in the relevant fund under the EPF Act within 15 days from closure of every

month, but as stated by the Ld. AR, and, rightly so, a further the grace period of 5 days to remit the contribution had been allowed under the said Act. The issue as to whether or not the grace period would fall within the meaning of the term “due date” as contemplated in Section 36(1)(va) of the Act, had come up before the Hon’ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (2018) 90 taxmann.com 51(Bom.). The Hon’ble High Court in its said aforesaid order had, inter alia, observed that payments having been made within the grace period were to be held as having been made within the period prescribed by law. For the sake of clarity, the relevant observations of the Hon’ble High Court are culled out as under:

“7. In the present case, the Tribunal found that the assessee had deposited the contribution within the grace period and having done so, even assuming applicability of Section 43B, the requirement of law is deemed to have been complied. Furthermore, the payment having been made within grace period, the same was held to have been made within the period prescribed by law. On this ground also the order of CIT(A) was upheld by the Tribunal. The order of the CIT(A) noted that the due date of the amount was 21st September, 2008 and the actual date of payment was 29th September, 2008. The CIT(A) also had found that the addition made by the Assessing Officer was not justified and the same was deleted. The only ground on which the Assessing Officer sought to make addition was apparently default in payment before the due date and the amount of Rs.9,770/- was required to be treated as income of the assessee in accordance with Section 2(24)(x), however, it was admittedly deposited in the ESIC account before expiry of the grace period which was not considered by the Assessing Officer.

8. xxxxxxxxxxxx

9. xxxxxxxxxxxx

10. xxxxxxxxxxxx

11. In our view the decision of the Tribunal in upholding the order of the CIT(A) in the case at hand cannot be faulted. The assessee was found to have deposited the amount within grace period and hence there is no substance in the grievance of the Revenue. Thus even the third question does not require any further consideration.”

As the assessee firm in the case before me had deposited the employees share of contribution towards EPF of Rs.1,88,346/- (supra) within the grace period under the EPF Act, 1952, therefore, respectfully following the judgment of the Hon’ble High Court of Bombay in the case of Pr. CIT Vs. Hind Filter Ltd. (supra), I am of the view that the said amount could not have been disallowed u/s.36(1)(va) r.w.s 2(24)(x) of the Act.

13. At this stage, I may herein observe that the Hon’ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) had held that employees share of contribution towards the welfare enactment had to be deposited by the assessee in terms of those enactments and on or before the due dates mandated by such concerned law. For the sake of clarity, the observation of the Hon’ble Apex Court is culled out as under:

“.....That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees’ contributions- which are deducted from their income. They are

not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date."

14. Considering the facts involved in the case of the assessee before me r.w the settled position of law, I am unable to persuade myself to subscribe to the disallowance of employees share of contribution of Rs.1,88,346/- made by the A.O u/s.36(1)(va) r.w.s 2(24)(x) of the Act. Accordingly, the disallowance of Rs.1,88,346/- made by the A.O u/s.36(1)(va) r.w.s 2(24)(x) of the Act is herein vacated.

15. Apropos the disallowance of the balance amount of Rs.3,50,173/- (out of Rs.5,44,519/-) qua the delayed deposit of employees share of contribution made by the A.O u/s.36(1)(va) r.w.s 2(24)(x) of the Act, I am of the considered view that in light of the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra), as the said amount had been deposited by the assessee beyond the "due date", therefore, the A.O had rightly made an addition of the same to the returned income of the assessee.

Thus, the **Ground of appeal No.2** raised by the assessee is partly allowed in terms of my aforesaid observations.

16. Apropos the ad-hoc disallowance of Rs.2,50,000/- made by the A.O qua the expenses booked by the assessee under various heads of expenses, I find that the same was made for the reason that the assessee firm had supported its said claim for deduction of expenses incurred in cash only on the basis of internal vouchers. Although, the A.O had observed that the expenses in question were not open for verification, but he had failed to point out any specific instance where any such expenditure was not verifiable by him. Apart from that, I find though the assessee on being queried as to why no *pakka* vouchers were being maintained had furnished its reply but the same had not been considered by the A.O. Be that as it may, as the A.O had failed to point out any specific instance of expenditure that was incurred for a purpose other than business or was in the nature of a personal expenditure, therefore, there was no justification for him to have dislodged any part of the aforesaid claim of deduction of the assessee on an ad-hoc basis. I, say so, for the reason that Section 37(1) of the Act categorically provides the set of circumstances where the assessee's claim for deduction of expenditure is not to be allowed

while computing its income chargeable under the head “profit and gains of business or profession”.

17. In the backdrop of the aforesaid facts I find substantial force in the claim of the ld. A.R that in absence of pointing out of any specific infirmity qua the assessee’s claim for deduction of the aforesaid expenditure by the lower authorities, the disallowance of a part of the same in a most arbitrary manner on an ad-hoc basis could by no means be held to be justified. My aforesaid view is fortified by the order of the ITAT, Kolkata in the case of Animesh Sadhu Vs. ACIT, Circle-1, Hoogly, ITA No. 11/Kol/2013, dated 12.11.2014 and that of the ITAT, Delhi in the case of ACIT, New Delhi Vs. M/s Modi Rubber Ltd. ITA No. 1952/Del/2014, dated 15.05.2018. Also, my aforesaid view that an assessee’s claim for deduction of an expenditure u/s.37 of the Act cannot be arbitrarily disallowed by the A.O on an ad-hoc basis is supported by the order of the ITAT, Raipur in the case of M/s. Sunita Finlease Limited Vs. Income Tax Officer, ITA No.244/RPR/2017 dated 30.03.2022. I am of the considered view, that a disallowance of an expenditure claimed by the assessee as a deduction as per the mandate of section 37 of the Act can only be disallowed in case of satisfaction of either of the conditions set out in the said section, viz. (i) the expenditure is in the nature of a capital

expenditure or personal expenditure of the assessee; or (ii) that the expenditure had been incurred for any purpose which is an offence or which is prohibited by law. As the A.O had failed to place on record any material which would prove to the hilt that the assessee had either raised a bogus claim of expenditure; or that the said expenditure was not incurred wholly and exclusively for the purpose of business; or that the expenditure so claimed as a deduction did not fall within the four parameters of Section 37 of the Act, therefore, I am unable to persuade myself to subscribe to the disallowance to the said effect so made by the A.O. I, thus, in terms of my aforesaid observations vacate the disallowance of Rs.2,50,000/- made by the A.O. The **Ground of appeal No.3** is allowed in terms my aforesaid observations.

18. **Grounds of appeal No.(s) 1 & 4** being general in nature are dismissed as not pressed.

19. In the result, appeal of the assessee is partly allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 01st day of June, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 01st June, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच,
रायपुर / DR, ITAT, “SMC” Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur