

THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1188/Del/2023
Assessment Year: 2019-20

S K G Traders P. Ltd., F-4, Pankaj Plaza, Plot No. 61, Sec-40, Dwarka, Delhi 110075 PAN AAPCS 4165 E	vs.	The DCIT, Circle 22(2), Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Anil Chopra, CA
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	07.06.2023
Date of Pronouncement :	07.06.2023

ORDER

Per Chandra Mohan Garg:-

This appeal filed by the assessee is directed against the order dated 17.11.2022 of the Ld. NFAC, New Delhi, relating to Assessment Year 2019-20.

2. The Id. Senior DR, candidly agreed to the prayer of assessee that the delay of 97 days in filing appeal before the Tribunal was caused due to the failure of the appellant company as there was financial crisis and the assessee company could not pay consultation fees to its tax advocate/advisor. Therefore delays is condoned and appeal is admitted for hearing on merits.

3. As per grounds of appeal, the assessee has challenged the disallowance of employees contribution to Provident Fund/ESIC u/s 36(i)(va) r.w.s. 43B of the Act. When the matter was called for hearing, none appeared for the assessee. It was seen that opportunities have been given in the past for compliance. However, none appeared on behalf of the assessee. Under these circumstances, we are constraint to proceed ex-parte in the absence of the assessee. The Id. assessee representative (AR) submitted that the authorities below have not considered the fact that the assessee has paid the contribution towards ESIC and EPF after the due date prescribed under the relevant provisions but the same was paid before due date of filing of return u/s. 139(1) of the

Act, and such addition cannot be made in the intimation under section 143(1) of the Act.

4. Ld. Sr.DR for the Revenue on its part, contended that Central Processing Centre ("CPC") has made additions of Rs. 27,70,629/- to the returned income of the assessee on account of late deposit of employees contribution to Provident Fund/ESIC deferred while processing the return of income. In this regard, the action of the Revenue in making disallowance towards late deposit of employees contribution to Provident Fund/ESIC was supported by the judgment rendered in the case of Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC). Ld. Sr. DR for the Revenue thus submitted that even for Assessment Years prior to Assessment Year 2021-22, belated deposit of employees contribution held in Trust by the employee Assessee are to be reckoned as taxable income of the assessee u/s. 2(24)(x) r.w. Section 43B of the Act and the deduction u/s 36(i)(va) of the Act would not be permissible thereon in case of belated payments. Ld. Sr.DR for the Revenue further contended that the delayed deposit of employees contribution indicated in the Audit Report is sufficient for adjustment under section 143(1) of the Act, as held by the Pune Bench of the Tribunal in the case of Cemtile Industries vs ITO TS-933-ITAT-2022 (Pune).

5. The issue towards taxability of belated payment of employees contribution to Provident Fund/ESIC is no longer *res integra* in the light of the judgement of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs CIT (supra). The co-ordinate Bench of the Tribunal in Cemtile Industries vs ITO (supra) had expressed a view that such adjustment/disallowance is also permissible in the proceedings carried out u/s 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in Savleen Kaur & Others vs ITO in ITA No.2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023 and in BT Data and Surveying Services India Pvt. Ltd. vs. ITO in ITA No.1658/Del/2021 for Asy 2018-19 vide order dated 07.02.2023 has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-ordinate Benches, we do not see any merit in the appeal of the assessee. We, thus, do not see any reason to interfere with the order of Ld.CIT(A). Accordingly, grounds of assessee are dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 07.06.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 07th June, 2023.

NV/-

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi