

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

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 263/Kol/2023

Assessment Year: 2019-20

Nine Star Commodities Private Limited 112, Parvati Shiv Kripa Tower 1 st A-Road Sardarpura, Jodhpur Rajasthan - 342003 [PAN : AADCN4180G]	Vs	Assessing Officer, Ward-6(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Subhas Agarwal, A/R
Revenue by :	Shri Abhijit Datta, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 01/06/2023
घोषणा की तारीख /Date of Pronouncement: 05/06/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is the appeal preferred by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the Id. CIT(A)"], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 31/01/2023 for the Assessment Year 2019-20.

2. The sole grievance of the assessee is that the Id. CIT(A) erred in confirming the disallowance made u/s 43B of the Act at Rs.3,91,525/- and disallowance of employees' contribution to PF & ESI at Rs.6,037/-

3. We have heard rival contentions and perused the material placed before us. So far as the disallowance of PF & ESI of Rs.6,037/- is concerned raised in Ground No. 3 of this appeal, it is an admitted fact that the alleged sum was paid after the due date prescribed under

the relevant Act. The Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* has 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.

4. So far as Ground No. 2 regarding disallowance of Rs.3,91,525/- u/s 43B of the Act is concerned, we note that before the Id. CIT(A), the assessee has claimed that the alleged sum has been paid before the due date of furnishing of the return of income u/s 139(1) of the Act but in the tax auditor report, the tax auditor has inadvertently mentioned the said sum in the wrong column which is meant for those amounts which fall under the category of expenses mentioned u/s 43B of the Act but they are not paid before the due date of furnishing of return of income u/s 139(1) of the Act and are disallowable. Based on this observation, the CPC had made the said disallowance. However, all the alleged sum has been paid before the due date of furnishing of the return of income. But the Id. CIT(A), in the absence of the certificate from the auditor, did not allow the claim of the assessee. It was submitted before us by the Id. Counsel for the assessee that if an opportunity is granted, then, the assessee can file all relevant details including the copy of proof of payment and certificate from auditor

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before the Assessing Officer for necessary verification. The Id. D/R was fair enough in not opposing to this request made by the assessee.

5. We, therefore, restore the issue of disallowance of Rs.3,91,525/- u/s 43B of the Act to the file of the jurisdictional Assessing Officer before whom, the assessee shall file details of proof of payment showing that the said liability has been paid off before the due date of furnishing of return of income u/s 139(1) of the Act and also produce the certificate from the auditor who made the inadvertent mistake in the audit report uploaded on the income tax portal. Needless to mention that the assessee should be provided reasonable and proper opportunity of being heard and to place relevant material on record in support of the ground raised by it.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 5th June, 2023 at Kolkata.

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 05/06/2023

SC S.P.

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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