

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

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

ITA No.1494/Del/2022
Assessment Year: 2019-20

SBS International P. Ltd., Plot No. 179, Sector-3, IMT Manesar, Haryana 122005 PAN AACCS 0728 G	vs.	Assistant Director of Income Tax, CPC, DCIT Circle 22(2), Bengaluru 560500
(Appellant)		(Respondent)

For Assessee :	None
Revenue For :	Shri Anuj Garg, Sr. DR

Date of Hearing :	08.06.2023
Date of Pronouncement :	08.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of Id. NFAC, New Delhi dated 04.08.2021 for AY 2019-20.

2. When the appeal was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite several notices. However, on perusal of the appeal records and impugned order, we find that the appeal can be disposed of ex-parte qua assessee after hearing the arguments of Id. Senior DR. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

3. As per report of registry this appeal has been filed belatedly by 267 days on 27.06.2022 against the order of NFAC Delhi order dated 04.8.2021. The appellant vide letter dated 28.06.2022 submitted on 05.07.2022, explaining the delay has submitted that keeping in view the directions of the Supreme Court in Re Cognizance For Extension of Limitation, Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 dated January 10, 2022, extended limitation period for filing of appeal is 90 days from the 01.03.2022 i.e, 30.05.2022 and the assessee has filed the present appeal within extended limitation on 28th May 2022. We have received intimation from no-reply@itat.nic.in to file and submit your physical appeal as prescribed under rules before the Income Tax Appellate Tribunal, Delhi within 30 days i.e. on or before 27/06/2022. The

physical appeal was filed by the Appellant on 27/06/2022 within the time prescribed in the intimation.

4. The Id. Senior DR has not objected or controverted to the above submissions of assessee explaining the delay in filing appeal. Therefore in view of order of Hon'ble Supreme Court (supra) we hold that the appeal has been filed within prescribed time limit including the extended time as per orders of Hon'ble Supreme Court. Accordingly, the appeal is treated as filed within prescribed time limit including extended time by Hon'ble Supreme Court. Hence we proceed to adjudicate the appeal.

5. The grounds of assessee are as follows:-

1. That on the basis of facts and circumstances of the case, the order passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre - CIT (A), NFAC, ("Ld. CIT(A)") dated 04-08-2021 (hereinafter referred to as 'impugned appellate order) is erroneous and bad in law.

2. That the Ld. CIT(A) has erred in confirming the disallowance made by Ld. DCIT, CPC, Bangalore ("Ld. AO") under section 36(1)(va) of Rs. 11,62,222/- on account of delay in deposit of employee's contribution towards PF/ESI without considering the correct interpretation and application of latest law in this regard.

3. That the Ld. CIT(A) grossly erred in placing reliance on amended provisions of section 36(1)(va) and section 43B as per Finance Act, 2021 and applying these amended provisions retrospectively for sustaining disallowance made by Ld. DCIT, CPC, Bangalore ("Ld. AO") under section 36(1)(va) of Rs. 11,62,222/- on account of delay in deposit of employee's contribution towards PF/ESI.

4. That the Ld. CIT(A) erred in confirming the disallowance made by Ld. DCIT, CPC, Bangalore ("Ld. AO") under section 36(1)(va) of Rs. 11,62,222/- on account of delay in deposit of employee's contribution towards PF/ESI without observing the principles of natural justice and without appreciating the facts and circumstances of the case.

5. That having regard to the facts and circumstances of the case, the Ld. CIT(A) ought to have quashed the order w/s 143(1) passed by Ld. DCIT, CPC, Bangalore ("Ld. AO ") as the jurisdiction was not validity assumed as per law.

6. That the Ld. CIT(A) erred in confirming the disallowance under section 36(1)(v) of Rs. 11,62,222/- under the head income from business in the intimation issued us 143(1) without appreciating the fact that such addition does not constitute as prima facie adjustment under section 143(1)(a) and hence Ld. AO acted without jurisdiction and made disallowance by assuming incorrect jurisdiction in this regard.

7. That the Ld. CIT(A) erred in confirming the disallowance made by Ld. AO under section 36(1)(va) of Rs. 11,62,222/- on account of delay in deposit of employee's contribution towards PF/ESI without considering the fact that such amount was duly deposited on or before due date of filing return u/s 139(1).

6. The assessee has challenge order of Id. CIT(A) sustaining disallowance made by DCIT, CPC Bangalore u/s. 36(1)(va) of Rs. 11,62,222/- on account of delay in deposit of employees contribution towards PF & ESI. The assessee has also alleged that the Ld. CIT(A) erred in confirming the disallowance under section 36(1)(v) of Rs. 11,62,222/- under the head income from business in the intimation issued us 143(1) without appreciating the fact that such addition does not constitute as prima facie adjustment under section 143(1)(a) and hence Ld. AO acted without jurisdiction and made disallowance by assuming incorrect jurisdiction in this regard.

7. The Id. Senior DR submitted that the issue is no more res integra after judgement of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC) and order of ITAT Pune Bench in the case of Cematile Industries vs ITO TS-933-ITAT-2022 (Pune) and the DCIT, CPC is very well empowered to make adjustment u/s. 143(1) (a) of the Act on this count.

8. On careful consideration of above submissions, we note that Central Processing Centre ("CPC") has made additions of Rs. 11,62,222/- 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 Cematile Industries vs ITO TS-933-ITAT-2022 (Pune).

9. The issue towards taxability of belated 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 Cematile 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, I do not see any merit in the appeal of the assessee. I thus, do not see any warrant to any reason to interfere with the order of Ld.CIT(A).

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

Order pronounced in the open court on 08.06.2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 08th June, 2023.

Sd

(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi