

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 94 & 95/Asr/2023
Assessment Year: 2019-20 & 2020-21

Wonderland Amusement
Park Pvt. Limited
C/o V.P. Vijh & Co. C. A
1st & 2nd Floor, K. K. Tower
Opposite Circuit House,
Jalandhar City, Punjab-
144001

Vs. The Asst. DIT
CPC, Bengaluru

PAN: AADCM3296J

(Appellant)

(Respondent)

Assessee by : Shri Sandeep Vijh, CA
Revenue by : Shri Pardeep Kumar, Sr. DR

Date of Hearing : 12/06/2023
Date of Pronouncement : 15/06/2023

ORDER

Per Dr. M. L. Meena, AM:

Both the above appeals have been filed by the Assessee against the order even dt. 03/02/2023 passed by the Ld. CIT(A)/NFAC, Delhi dated 03/02/2023 in respect of Assessment Years 2019-20 & 2020-21 challenging therein the common issue of disallowance of delayed deposit of PF & ESI beyond the date mentioned under the respective Act.

2. At the outset, the Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has sustained the addition made under section 143(1) without giving proper opportunity to the assessee to make written submission.

3. The Ld. Counsel for the Assessee contended that the assessee was asked to submit written submission by 03/02/2023 in compliance to notice issued dt. 19/01/2023 (APB page 1 to 4).

4. The Ld. AR argued that on the said date, written submission could not be uploaded as the option for uploading reply was not available at the portal and that the grievance was lodged by appellant in this regard on 30/02/2023 with the DIT system as well as e-filing web manager (APB page no. 5 & 6). He further contended that the email was also send to the samadhan.faceless.appeal@incometax.gov.in reiterating that the option to submit reply was not available as the response tab had been grayed out (APB page no. 7)

5. He further submitted that the Ld. CIT(A) has passed the impugned order exparte qua the assessee in violation of the principle of natural justice as the assessee has been denied to be heard during the course of the first appellate proceedings. Accordingly, he prayed that the matter should be restored back to the file of the Ld. CIT(A) for adjudicating afresh.

6. Per contra the Ld. DR has supported the impugned order, however he has no objection to the request of the assessee on account of principle of natural justice.

7. We have heard the rival contention, perused the material on record, impugned order and the written submission filed before us. It is undisputed fact on record that there was technical glitch in the IT portal. Consequently, the assessee could not upload the written submission as the option to submit the reply was not available at the portal. The Ld. Counsel for the Assesee has filed before us the documentary evidence to the effect of non functioning of the portal and the grievance lodged with DIT system as well as e-filing web manager in this regard.

8. The Hon'ble Delhi High Court in the case of Bharat Aluminium Company Limited Vs. Union of India (2022) 134 Taxmann.com 187 has held that the assessee has a vested right to personal hearing and the same has to be given, if an assessee asked for it. The right to personal hearing cannot depend upon the facts of each case.

9. In view of principles of natural justice, we consider it deem fit to restore back the matter to the file of the Ld. CIT(A) for adjudicating the issue afresh regarding addition made on account of delayed deposit of ESI/PF beyond date mentioned under the respective act. The Ld. CIT(A) is directed to give adequate opportunity of being heard to the assessee and pass a speaking order after considering the written submission filed by the assessee, in the light of the latest judgment of the Hon'ble Apex Court in the case of Checkmate Services P. Ltd. & Ors. Vs. CIT & Ors. (2022) 448 ITR 518 (SC) as discussed in para 27 of impugned order. The assessee is also directed to cooperate in the fresh proceeding before the Ld. CIT(A) by making the requisite information available in time. Accordingly, the matter is restore back to the file of the Ld. CIT(A).

10. In the result, both the above appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 15/06/2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

A.G

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The DR, I.T.A.T.

True Copy
By Order