

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1906/Mum/2022  
(Assessment Year: 2020-21)

Radhakrishna Foodland Pvt. Ltd. Radhakrishna House, Majiwade Village, Majiwade, Mumbai-400 601	Vs.	Asst. CIT, Circle-3, Mumbai
PAN/GIR No. AAACR 5085 R		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri M. A. Gohel
<b>Revenue by</b>	:	Ms. Mahita Nair
<b>Date of Hearing</b>	:	29.03.2023
<b>Date of Pronouncement</b>	:	27.06.2023

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The assessee has challenged the grounds of disallowance made u/s. 36(1)(va) of the Act towards delayed payment of employees contribution towards Provident Fund, ESIC and Labour Welfare Fund amounting to Rs.15,65,456/-. The assessee has also challenged the addition made by CPC u/s. 143(3) amounting to Rs.64,00,836/- as reduction of current year's loss which ought to be carry forward without considering the fact that there was no mistake or error in the return of income filed by the assessee.

3. The brief facts of the case are that the assessee had e-filed its return of income dated 16.12.2020, declaring loss at Rs.1,46,64,749/- and the same was processed u/s. 143(3) of the Act as per intimation dated 11.03.2019 and thereby determining a loss at Rs.66,98,457/-. The Assessing Officer (A.O. for short)/CPC has made an addition of Rs.15,65,456/- u/s.2(24)(x) r.w.s. 36(1)(va) of the Act as 'delayed deposit' towards employees contribution to PF, ESIC and Labour Welfare Fund and the loss for the current year was determined and carry forward for future years was at Rs.66,98,457/-, thereby making a total addition/disallowance of Rs.79,66,292/-.

4. The assessee was in appeal before the Id. CIT(A), challenging the impugned addition/disallowance made by the A.O/CPC u/s. 143(1) of the Act. The Id. CIT(A) confirmed the said addition and, hence, the assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

5. Ground no. 1 pertains to the disallowance made on account of delayed deposit of employees contribution to PF, ESIC and Labour Welfare Fund which is made after the due date prescribed under the relevant Acts but before filing of the return of income u/s. 139(1) of the Act. As this issue is no longer *res integra* and is covered by the decision of the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd. vs. CIT* [2002] 143 taxmann.com 178 (SC), wherein it was held that the delayed payment of employees contribution to PF & ESIC after the prescribed due date as per the relevant Act is not an allowable deduction. As it is a settled proposition of law, we do not find any reason to deviate from the same as we find no infirmity in the order of the Id. CIT(A) on this ground. Hence, ground no. 1 raised by the assessee is dismissed.

6. Ground no. 2 pertains to the issue that the A.O./CPC has reduced the current year loss by a sum of Rs.64,00,836/- at the time of processing the return of income u/s. 143(1) of the Act. The Id. AR's contention that the disallowance of loss of Rs.64,00,836/- was made without any valid reason and that the assessee was not given notice on this issue nor was the assessee's explanation sought for before making the disallowance. The Id. AR for the assessee submits that the assessee has credited excess provision for expenses written back of Rs.23,75,208/- and sundry credit balance of Rs.40,25,622/- already to profit and loss account and hence, the same amounts to double addition.

7. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, contended that the audit report of the assessee shows excess provision for expenses written back was Rs.23,75,208/- and sundry credit balance written back amounted to Rs.40,25,622/- which are chargeable to tax u/s.41(1)(a) of the Act. The Id. DR further stated that the assessee has failed to show this amount of income in the return of income. The Id. DR stated that the said disallowance was made by the A.O./CPC based on the certified audit report in Form 3CD. The Id. DR relied on the order of the lower authorities.

8. We have carefully considered the rival contentions and intimation u/s. 143(1) of the Act. The assessee has current year loss of Rs.1,46,64,749/- whereas in section 143(1) computation the same is shown as only Rs.66,98,457/-. The difference being the disallowance of Rs.15,65,466/- on account of delay in the deposit of employees contribution to PF and further income of Rs.64,00,836/- u/s. 41(1) of the Act. The claim of the assessee is that Rs.64,00,836/- is already credited to the profit and loss account as

'other income' and the same has again taxed u/s. 41(1) of the Act by intimation u/s. 143(1) of the Act which amounts to double addition. The Id. CIT(A) has observed that the assessee has shown under scheduled carry forward loss of Rs.1,46,64,749/- which amounts to the loss remaining after set off and under scheduled carry forward loss to be carry forward to future years is also shown at Rs.1,46,64,749/-. The Id. CIT(A) further stated that after reducing the disallowance of employees contribution, the loss carry forward should have been Rs.1,30,99,293/- but the assessee has determined the loss only to the tune of Rs.66,98,457/-. The Id. CIT(A) held that the assessee failed to show Rs.64,00,836/- as 'income/profit' in its return of income and, hence the impugned addition was made.

9. From the above observation, we are of the considered view that this ground of appeal requires factual verification to determine whether the assessee has already credited the amount to P & L account and then the same would be double addition resulting in reduction of loss. Hence, we deem it fit to remand this issue back to the file of the A.O. to verify the amount of loss to be carried forward and if any, the same is to be allowed, in accordance with the law. Hence, this ground of appeal raised by the assessee is allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is partly allowed.

*Order pronounced in the open court on 27.06.2023.*

Sd/-

(Prashant Maharishi)  
Accountant Member

Sd/-

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 27.06.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai