

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री राजेश कुमार, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI RAJESH KUMAR, ACCOUNTANT MEMBER

I.T.A. No.: 224/KOL/2023

Assessment Year: 2020-21

LSI Engineering & Consultants Limited.....Appellant
[PAN: AABCL 8548 G]

Vs.

ADIT, CPC, Bengaluru.....Respondent

Appearances by:

Sh. Siddarth Agarwal, Adv., appeared on behalf of the Assessee.

Sh. Vijay Kumar, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : June 8th, 2023

Date of pronouncing the order : July 3rd, 2023

ORDER

Per Rajpal Yadav, Vice-President (KZ):

The present appeal is directed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 19.01.2023 passed for AY 2020-21. The assessee has taken four grounds of appeal out of which ground no.

4 is general ground which does not call for recording of any specific finding, hence, dismissed.

2. In ground nos. 1 & 2, the assessee has pleaded that ld. CIT(A) has erred in confirming the addition of Rs. 2,57,423/- which was added by ld. AO with the aid of Section 36(1)(va) of Income Tax Act, 1961 (in short the 'Act') on the ground that assessee failed to deposit the employees' share of PF&ESI into these accounts within the due date provided under these Acts i.e. PF&ESI Acts.

3. With the assistance of ld. Representative, we have gone through the records carefully. Ld. Counsel for the assessee agreed that the issue involved in ground nos. 1 & 2 is to be decided against the assessee in view of the latest judgment of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. vs. CIT* reported in [2022] 143 taxmann.com 178 (SC) dated 12.10.2022.

4. Hon'ble Supreme Court has held that if employees' consideration deducted from their salary is not paid within due date provided under the PF&ESI Act, then assessee will not be entitled for claiming the deduction. Ld. CIT(A) has examined this aspect elaborately in the impugned order and put reliance upon the judgment of Hon'ble Supreme Court. Hence, we do not find any merit in these two grounds of appeal. These are rejected.

5. In ground no. 3 assessee has pleaded that ld. CIT(A) has erred in not adjudicating upon the issue of erroneous adjustment of refund as raised in ground nos. 4 & 5 filed before the first appellate authority. Ld. Counsel for the assessee submitted that in a *prima facie* adjustment proceeding ld. AO has adjusted the previous year refund erroneously and assessee has raised a specific ground i.e.

ground nos. 4 & 5, these grounds have not been adjudicated by ld. first appellate authority. Ld. D/R was unable to controvert this submission.

6. On due consideration of the facts and circumstances, we find that ground nos. 4 & 5 raised before ld. CIT(A) read as under:

“4. That the Learned Assessing Officer has erred in adjusting an outstanding demand of earlier year i.e., assessment year 2018-19 amounting to Rs.15,11,060 despite the fact that the assessee had filed a rectification for the said assessment year under section 154 of the Income-tax Act 1961 and which is yet to be disposed off by the income tax department.

5. That the Learned Assessing Officer has erred in ignoring the rectification petition filed on 2nd November, 2021 in respect to assessment year 2018-19 and adjusting the outstanding demand of that year erroneously with the refund of this year.”

7. Ld. CIT(A) has not decided these grounds of appeal because no finding is discernible from the impugned order on this issue, therefore, we deem it appropriate to remit these issues back to ld. first Appellate Authority for adjudication. Ld. CIT(A) re-adjudicate these grounds of appeal after providing due opportunity of hearing to the assessee and calling for its submissions.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 3rd July, 2023

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Rajpal Yadav]
Vice-President

Dated: 03.07.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. LSI Engineering & Consultants Limited, 227, Anandalok, A.J.C. Bose Road, Kolkata-700 020.**
- 2. ADIT, CPC, Bengaluru.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata