

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(VIRTUAL COURT)

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 99 & 100/Asr/2023

Assessment Years: 2018-19 & 2020-21

Glitters Forever House
Keeping Services Pvt. Ltd.,
Tajplaza Shopping Complex,
Jawahar Nagar, Srinagar
190001, Jammu & Kashmir

[PAN: AAECG 1441J]

(Appellant)

Vs.

Income Tax Officer,
Ward-1, Srinagar

(Respondent)

Appellant by : Sh. Bashir Ahmad Lone, CA

Respondent by: Ms. Priyanka Singla, Sr. DR

Date of Hearing: 26.06.2023

Date of Pronouncement: 06.07.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi even dated 08.03.2023 in respect of Assessment Years 2018-19 & 2020-21.

2. The assessee has raised the following grounds of appeal in ITA No. 99/Asr/2023:

- “1. The CIT(A) erred in both facts and laws by confirming the order/intimation u/s. 143(1) of the Act, as the disallowance u/s. 36(1) (va) will not fall within the purview of mistake under the grab of prima facie adjustment.
2. The CIT (A) erred in both facts & laws by confirming the disallowance of Rs. 34,96,001/- made while processing ITR u/s. 143(1) is unjustified and unwarranted, in view of the fact that entire payments stand made before date of Filing ITR.
3. The CIT (A) erred in both facts & laws by confirming the disallowance of Rs. 34,96,001/- made while processing ITR u/s. 143(1) is unjustified and unwarranted, in view of the fact, the delay is due to circumstances and assessee claim is duly supported by various judicial pronouncements.
4. The appellant craved to amend, alter or add any ground of appeal before the same is heard and disposed off.”

3. The assessee has raised the following grounds of appeal in ITA No. 100/Asr/2023:

- “1. The CIT(A) erred in both facts and laws by confirming the order/intimation u/s. 143(1) of the Act, as the disallowance u/s. 36(1)(va) will not fall within the purview of mistake under the grab of prima facie adjustment.
2. The CIT (A) erred in both facts & laws by confirming the disallowance of Rs. 43,03,865.00/- made while processing ITR u/s. 143(1) is unjustified and unwarranted, in view of the fact that entire payments stand made before date of Filing ITR.
3. The CIT (A) erred in both facts & laws by confirming the disallowance of Rs. 43,03,565.00/- made while processing ITR u/s. 143(1) is unjustified

and unwarranted, in view of the fact, the delay is due to circumstances and assessee claim is duly supported by various judicial pronouncements.

4. *The appellant craved to amend, alter or add any ground of appeal before the same is heard and disposed off."*

4. In both the appeals, the assessee has challenged the impugned orders of the Ld. CIT(A) in confirming the addition on the common issue of prima facie adjustment made in intimations passed u/s. 143(1) of the Act, as the disallowance u/s. 36(1)(va) will not fall within the purview of mistake under the grab of prima facie adjustment. Both appeals were heard together and adjudicated by this consolidated order.

5. Ground No. 2 & 3 of both the appeals are dismissed as not presse.

6. At the outset, the Ld. Counsel submitted that the Ld. CIT (A), while disposing off the appeal, has not adjudicated the ground No 1 raised before him. The same is reproducing as under:

"The appellate filed its ITR electronically and declared Income of Rs 1971681.00. The ITR is accompanied with duly audited accounts. The CPC while processing ITR u/s 143(1) of the Act made disallowance of Rs 34,96,001.00 u/s 36(1) (va) of the Act. it is submitted, that the additions made by CPC will not come under the ambit of provisions of sections u/s 143(1)(a) of the Act."

7. He further submitted that the CPC while processing the return u/s 143(1) of the Act, made disallowance of Rs. 34.96,001.00 u/s 36(1)(va) of

the Act and while adjudicating the appeal filed by the assessee, the Commissioner of Income Tax Appeals/ National Faceless Appeal Centre (NFAC) Delhi, has confirmed the disallowance made by CPC Bangalore, without adjudicating the ground on merits on this issue of appellant assessee claim of deduction u/s 36(1)(va) of the Act in particular while disposing off the appeal. The counsel argued that the intimation passed u/s 143(1) of the Act is bad in law, as the disallowance u/s 36 (1)(va) of the Act will not fall within the purview of mistake under the grab of prima facie adjustment. He prayed that the matter may be remanded back to the file of the CIT(A) to adjudicate the ground no. 1 of the appeal raised before him as above with categorical finding on the claim of deduction u/s 36(1) (va) of the Act. To buttress its contentions, referred to the decision of Mumbai Tribunal stating that ITAT Mumbai in the case of P R Packaging Service Vs ACIT (ITAT Mumbai), Appeal Number: ITA No. 2376/Mum/2022 vide Order dated 07/12/2022 differentiates ruling of apex court given in Checkmate Services Pvt. Ltd vs. CJT and deletes addition on account of delayed payment of employee's contribution to Provident Fund by observing as under:

(a) That the Tribunal after analyzing the aforesaid provisions interpreted the word indicated in the following manner and observed that "The tax auditor had not stated in the instant case to disallow Employees Contribution to Provident Fund

wherever it is remitted beyond the due date under the respective Act. Hence, in our considered opinion, the said action of the Ld. CPC Bangalore in disallowing the employees' contribution to Provident Fund while processing the return under section 143(1) of the Act is against the provisions of the Act as it would not fall within the ambit of prima facie adjustments.

That tribunal further observed that it was conscious of the fact the issue on merits was decided against the assessee by Hon. Supreme Court in Checkmate Services Pvt. Ltd. Order dated 12.10.2022, but the context of where assessment was framed under section 143(3) of the Act and not under section 143(1)(a).

Controversy:- *The issue before Hon Tribunal was "whether the Ld. CIT (A) was justified in upholding the action of the ADIT-CPC Bangalore in making disallowance of employee's contribution to Provident Fund based on the statement made in the Tax Audit Report while processing the return under section 143(1) of the Act.*

8. Per contra, the Ld DR although supported the impugned order, however, he failed to rebut the contention of the counsel.

9. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited. Admittedly, the CPC while processing the return u/s 143(1) of the Act, made disallowance of Rs. 34.96,001.00 u/s 36(1)(va) of the Act and that the CIT(A) / NFAC has confirmed the disallowance made by CPC Bangalore, without adjudicating the ground no. 1, on merits regarding the appellant assessee's claim of deduction u/s 36(1)(va) of the Act, although he was bound by virtue of section 250(4) of the Act to adjudicate each ground of appeal raised before him.

10. In view of the principles of natural justice, we consider it deem fir to remand the matter back to the file of the Ld. CIT(A) to adjudicate the ground No. 1, agitated by the appellant assessee, before him on merits of the case as per law after considering the written submission of the appellant and affording adequate opportunity of being heard. At the same time, liberty is granted to the Id. AR to make all submissions in respect of allowability of disallowed contribution of the employees to PF and ESI under relevant provisions in the interest of justice. This direction is being given because Id. AR has submitted that as the amount of deduction claimed under section 36(1)(va) of the Act has not been adjudicated by the Ld. CIT(A) and same is also not covered under section 43B of the Act, the amount of delayed contribution to PF and ESI in respect of employees contribution would be treated as income in the hands of the assessee u/s.2(24)(x) and on subsequent payment of the same, it would be a business expenditure, which can be claimed u/s.37(1) of the Act. We are not expressing any opinion in regard to his arguments as it has not been examined by the lower authorities. Liberty is also granted to the assessee to raise all arguments as are found necessary by him before the authorities below.

11. Accordingly, both the appeals of the assessee are restored to the Ld. CIT(A) to adjudicate on merits as per law.

12. In the result, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 06.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order