आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं**./I.T.A.No.40/Viz/2023**
(निर्धारण वर्ष **/ Assessment Year : 2019-20)**

SIONC Pharmaceuticals Private Ltd. D.No.43-11-56, Subbalakshminagar Railway New Colony Visakhapatnam **[PAN : AALCS7973C]**	Vs.	Deputy Commissioner of Income Circle-3(1) Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri C.Subrahmanyam, AR
प्रत्यार्थी की ओर से / Respondent by	:	Shri O.N.Hari Prasada Rao, DR
सुनवाई की तारीख / Date of Hearing	:	14.06.2023
घोषणा की तारीख/Date of Pronouncement	:	14.07.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1048022425(1) arising out of assessment order passed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act') dated 06.07.2020 for the Assessment Year (A.Y.) 2019-20.

2. Brief facts of the case are that the assessee is a domestic company, in the business of manufacturing of bulk drugs had filed it's return of income for the A.Y.2019-20 on 22.10.2019, declaring an income of Rs.13,69,28,420/-. However, Centralized Processing Centre (CPC) had processed the return of income u/s 143(1) vide it's order dated 06.07.2020 by making an addition of Rs.43,17,776/- (PF of Rs.34,33,167/- and ESI of Rs.8,84,589/-) to the returned income as the assessee deposited the PF / ESI Employees Contribution after the due date of the respective Acts i.e. PF Act and ESI Act.

3. Aggrieved by the order of the CPC, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A), relying on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1, dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

> *1. That under the facts and circumstances of the case, the orders passed u/s 143(1) of IT Act dated 06-07-2020 and confirmed by the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre Delhi (in short 'CIT(A)') vide his order dated 15.12.2022 are against the facts of the case and provisions of law.*

2. The learned CIT(A) erred in not appreciating that the amendment carried in the provisions of Section 36(1)(va) is prospective from A.Y.2020-21 as per the Memorandum explaining to the Finance Bill and hence could not be applied to the relevant assessment year 2019-20.

3. The learned CIT(A) erred in not appreciating the jurisdictional judicial pronouncements of ITAT in favour of the appellant, in absence of the verdict in favour of revenue by the Jurisdictional High Court.

4. The CIT(A) ought to have appreciated that the appellant has remitted the employee share of PF and ESI much before the filing of the return of income and in such circumstances, the amount of Rs.13,96,164/- should not have been disallowed and added to the returned income.

5. The CIT(A) failed to appreciate the fact that once the disallowance of the mployee share is disallowed u/s 36(1)(va), it becomes a permanent disallowance and is against the principles of natural justice.

6. The CIT(A) failed in appreciating the fact that the addition made is a disputable addition and such additions cannot be made in the intimation u/s 143(1) and hence the additions are to be deleted as per the provsions of law.

7. For these and such other grounds, that may be adduced at the time of hearing of the subject appeal, the appellant prays before the Hon'ble Tribunal that the order passed u/s 143(1) of the Act dated 06.07.2020, be quashed or granted such other relief as this authority may deem fit, in the interest of justice.

5. The only contention of the Ld.AR is that the assessee AO as well as the Ld.CIT(A) are not justified in disallowing the deposits made by the assessee towards PF / ESI before the due date of filing the return of income u/s 139(1) of the Act and the same ought to have been allowed

as deduction. He, therefore, pleaded to set aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee.

6. Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal filed by the assessee.

7. We have heard both the parties and perused the material available on record. Now the law is settled after a view had been taken by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., in Civil Appeal No.2833 of 2016, order dated 12.10.2022. In the case on hand also, the assessee made remittances before filing the return of income u/s 139(1), but not within the due date specified by the respective PF / ESI Acts. The judicial pronouncements of ITAT in favour of the assessee relied by the asessee were passed before the order in the case of Checkmate Services Pvt. Ltd., was rendered by the Hon'ble Supreme Court supra, hence, not applicable to the assessee's case. For the sake of clarity and convenience, we extract relevant part of the order of hte Checkmate Services Pvt. Ltd.(supra) as under :

> *"They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income is treated as a deduction. Thus, it is an*

essential condition for deduction that such amounts are deposited on or before the due date."

Since the decision of the Hon'ble Supreme Court pronounced the correct legal position of the allowability of belated payment of PF and ESI under the provisions of the Act, we are of the considered view that there is a mistake arisen as a result of the subsequent interpretation of law by the Hon'ble Supreme Court which would constitute "a mistake apparent from the records".

8. Therefore, we have no hesitation to come to a conclusion that the disallowance made by the AO as well as the Ld.CIT(A) needs no interference, in view of the decision of the Hon'ble Supreme Court mentioned supra.

9. However, the assessee raised legal grounds in Ground No.1, 6 and 7, saying that adjustments cannot be made in the intimation u/s 143(1). Similar issue has already been decided by the coordinate bench of the Tribunal in the case of Dasari Bujji Vs. ITO in I.T.A.No.20/Viz/2023, dated relying on the decision of coordinate bench of ITAT, Chennai in the case of Sree Gokulam Chit and Finance Co.P.Ltd. Vs. DCIT, Chennai vide I.T.A.No.765/CHNY/2022 dated 21.12.2022 and also the ratio laid down by the Hon'ble Madras High Court in the case of AA520

Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income Tax [2022] 138 taxmann.com 571 (Madras). For the sake of clarity and convenience, relevant part of the order of the Tribunal is extracted as under :

"7. We have heard both the parties and perused the material available on record. At the outset, as rightly pointed out by the Ld.DR, the issue with regard to late remittance of the contribution under PF and ESI is settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. mentioned supra. Now, the only contention of the Ld.AR is that the CPC has no power to make any adjustment u/s 143(1) intimation and it is applicable w.e.f. 01.04.2021. The Ld.AR further contended that the assessee never claimed any incorrect claim or there is no audit objection etc. which is mentioned u/s 143(1) of the Act. For the sake of clarity and convenience, we extract section 143(1) of the Act as under :

***Assessment**.*

***143.** (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—*

(a) the total income or loss shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure [68][or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under [69][section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

***Provided** that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

Provided further *that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made:*

Provided also *that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;*

(b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided *that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to, him:*

Provided further *that no intimation under this sub-section shall be sent after the expiry of [70][nine months] from the end of the financial year in which the return is made.*

Explanation.—For the purposes of this sub-section,—

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;

(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or

(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

(b) the acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).

Now the question arises in view of the provisions of section 143(1)(a) of the Act, while processing the return of income filed by the assessee, the total income or loss shall be computed after making the following adjustments as described u/s 143(1)(a)(ii) of the Act i.e. an incorrect claim, if such claim is apparent from any information in the return or not. The Memorandum of Finance Bill, 2008 as well as Finance Bill, 2016 explaining the provisions of section 143(1)(a)(ii) of the Act will explain the situation, which is reproduced as under :

"Memorandum to Finance Bill, 2008

Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralised Processing of Returns. Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. in the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income. In India, the scheme of summary assessment being in force since the l day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes ol internal inconsistencies. This leads to avoidable revenue loss. With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return :

(a) any arithmetical error in the return; or
b) an incorrect claim, if such incorrect claim is apparent from any information in the return. Further it is proposed to clarify the meaning of the term "an incorrect claim apparent from any information in the return".

This term shall mean such claim on the basis of an entry, in the return,-
(a) of an item, which is inconsistent with another entry of the same or some other item in such return;
(b) in respect of which, information required to be Furnished to substantiate such entry, has not been famished under this Act; or
(c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.
Further, these adjustments will be made only in the course of computerized processing without any human interface. In other words, the software will be

designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income, (emphasis supplied). For this purpose the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this. it is also proposed that-
(a) the Board may formulate a scheme with a view to expeditiously determine the tax payable by, or refund due to, the assessee,
(b) the Central Government may issue a notification in the Official Gazette, directing that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such restrictions, modifications and adaptations as may be specified in the notification. However, such direction shall not be issued after 31st March 2009;
(c) every notification shall be laid before each House of Parliament as soon as such notification is issued. Along with the notification, the scheme referred above is also required to be laid before each House of Parliament. Similar amendment has also been proposed in section 1 I5WE of the Income-tax Act, relating to fringe benefits.
These amendments will take effect from 1st April, 2008.

Memorandum to Finance Bill 2016

Legislative framework to enable and expand the scope of electronic processing of information
In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments (emphasis supplied) that can be made at the time of Processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. (emphasis supplied) However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

These amendments will take effect from the 1st day of June, 2016"

From the above Memorandum of Finance Bill, 2008 & 2016 explaining the provisions of section 143(1)(a)(ii) specifies the incorrect claim, particularly if such incorrect claim is apparent from any information in the return of income and that can be any information as such the audit report or some other information as provided by assessee in the return of income. In this context, it is pertinent to mention that earlier position is only prima-facie arithmetic adjustments can be made, but in view of the

amended provisions by the Finance Act, 2008, w.e.f. 01.04.2008, the amended provisions empowers adjustments to be made inter alia on the basis of remarks indicated in the return of income or incorrect claim apparent from any information in the return of income. Post amendment w.e.f. 01.04.2008, the scope of adjustment u/s 143(1) of the Act has widened and enlarged. It provides that total income shall be computed after making adjustments inter-alia on account of incorrect claim, if such incorrect claim is apparent from any information in the return of income. In the case on hand before me, the adjustments u/s 143(1)(a) has been made on the basis of information contained in the tax audit report with respect to the belated payments of employees contribution of EPF and ESI paid beyond the due dates prescribed under the respective Act and these funds are referred in section 36(1)(va) of the Act. ***The information gives the details of due date of payment, actual date of payment to the concerned authorities and these payments have been made beyond the due dates specified in the respective Acts i.e. Provident Fund Act & ESI Act, which attracts the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Act, leading to disallowance of this sum to the extent not paid on or before the due date stipulated in the respective PF and ESI Act.*** *The above view has been taken by the coordinate bench of ITAT, Chennai in the case of Sree Gokulam Chit and Finance Co.P.Ltd. Vs. DCIT, Chennai vide I.T.A.No.765/CHNY/2022 dated 21.12.2022 and also the ratio laid down by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income Tax [2022] 138 taxmann.com 571 (Madras) , wherein, it was categorically held that if there is any incorrect claim made in the return, the disallowance made by the CPC is valid. Therefore, I am of the view that the decisions relied on by the Ld.AR has no application, in view of the decision of Hon'ble High Court of Madras. The Hon'ble High Court of Madras held that*

> *"The scope of an 'intimation' under section 143(1)(a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employees the term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purpose of section 143(1)(a) of the Act."*

Therefore, in view of the decision of Hon'ble High Court of Madras, I am of the firm view that the adjustments made by CPC u/s 143(1) are valid and disallowance made by way of adjustment by CPC has been rightly upheld by the Ld.CIT(A). Hence, I do not find any infirmity in the order of the Ld.CIT(A) and dismiss the appeal of the assessee."

The contention of the assessee that the additions cannot be made in the intimation u/s 143(1) has no application in the present case on hand, since the assessee made incorrect claim, according to the decision rendered by the Hon'ble High Court of Madras. Therefore, we find no merit in the case of the assessee and the appeal of the assessee is dismissed.

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

Order pronounced in the open court on 14th July, 2023.

Sd/-	Sd/-
(एस बालाकृष्णन)	**(दुव्वूरु आर.एल रेड्डी)**
(S.BALAKRISHNAN)	**(DUVVURU RL REDDY)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

Dated : 14.07.2023

L.Rama, SPS

की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– SIONC Pharmaceuticals Private Ltd., D.No.43-11-56, Subbalakshminagar, Railway New Colony, Visakhapatnam
2. राजस्व/The Revenue – The Deputy Commissioner of Income, Circle-3(1), Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam