

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.536/Kol/2023
Assessment Year: 2020-21**

Swamina International (P) Ltd. C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd Floor, Kolkata-700069. (PAN: AA ECS 5223 J)	Vs.	Deputy Commissioner of Income Tax, Circle-11(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddarth Agarwal, Advocate
Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR.

Date of Hearing : 17.07.2023
Date of Pronouncement : 18.07.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2022-23/1049525537(1) dated 08.02.2023 passed against the Intimation by Asst. Director of Income Tax, CPC, Bengaluru u/s.143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 03.11.2021 for AY 2020-21.

2. There is a delay of 53 days in filing the present appeal. We have perused the condonation petition and found that there is a reasonable cause for filing the appeal late by 53 days. Hence, we condone the delay and admit the appeal for hearing.

3. Brief facts of the case are that assessee is carrying on business of service and maintenance of industrial plants in Private & Public Sector. It filed its return of income on 24.03.2021 which is a belated return since the extended due date for filing the return was 15.02.2021. Total income reported by the assessee in the return is Rs.117,81,000/-. Centralised Processing Centre, Bengaluru (CPC) processed the return and issued its intimation u/s. 143(1) of the Act dated 03.11.2021. In this processing of return, the Ld. AO, CPC made a disallowance u/s. 36(1)(va) of a sum of Rs.23,23,977/- on account of employees contribution to PF or superannuation fund. Aggrieved, assessee went in appeal before the Ld. CIT(A) who sustained the disallowance. Aggrieved, assessee is in appeal before the Tribunal.

4. Before the Tribunal, Ld. Counsel for the assessee has furnished a written submission dated 06.09.2022. Also paper book is placed on record to substantiate the claim made by the assessee on the sole issue relating to disallowance for delay in deposit of employees' contribution to PF/superannuation fund. In its written submission, assessee has stated that it had made the payments of the said amount within the due date of filing the return as per the Act and the treatment of 43B and 36(1)(va) should be the same. It also submitted that the claim of the assessee is based on well settled principles of law and also decisions of various judicial forums viz., order of Hon'ble High Court of Calcutta in the case of CIT Vs. Vijay Shree Ltd. and Hon'ble Supreme Court decision in the case of CIT Vs. Alom Extrusion Ltd. wherein it was ruled that the deposits on account of PF/ESI were made before the filing of the return, the same would be allowable as deduction. Therefore, in accordance to its submission deposit of

employees contribution of PF and ESI would be allowable if the same is deposited within the due date of filing return of income.

5. We have heard the rival contentions and perused the material available on record. On the aforesaid issue relating to disallowance in respect of delay in deposit of employees' contribution to Provident Fund, the issue is squarely covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.*" Hon'ble Supreme Court has held that by virtue of section 2 (24) (x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2 (24)(x) , unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. It is further held that there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

6. In view of above discussion, we do not find any merit in the appeal of the assessee and the same is hereby dismissed.

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

Order pronounced in the open court on 18th July, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 18th July, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata