

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

BEFORE SHRI ABY T. VARKEY, JM AND MS. PADMAVATHY S, AM

आयकर अपील सं/ I.T.A. No.307/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

Roche Products (India) Pvt. Ltd. 8 th Floor, 146-B, 166A, Unit No.7, 8 & 9, R City Mall Lal Bahadur Shastri Marg, Ghatkopar (West), Mumbai-400086.	बनाम/ Vs.	ACIT-1(3)(1) Room No. 540, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR2744K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Shrihari Iyer
Revenue by:	Smt. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 01/06/2023

घोषणा की तारीख /Date of Pronouncement: 30/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 09.12.2022 for AY 2018-19.

2. At the outset, the Ld. AR of the assessee pointed out that the adjustment made by the CPC u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”) disallowing the Employee’s Contribution towards PF/ESIC for belated deposits is in line with the decision of the Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (448 ITR 518). Therefore, he does not contest the action of the CPC on principle as such. However, his limited prayer is that this lapse (*of not depositing the employee’s contribution within the due-date*) was only in few months (*Refer Chart infra*). According to assessee, a careful perusal of the deposit of contribution in the relevant government account of PF/ESIC, it would reveal that assessee had been depositing more amount i.e. advance amount in the relevant



ITA No.307/Mum/2023
A.Y. 2018-19
Roche Products (India)

account of PF/ESIC which can be discerned from a perusal of the chart which is reproduced as under: -

Roche Products (India) Pvt. Ltd AY. 2018-19 ITA. No. 307/Mum/2023								
Sr. No.	Month	Sum received from employees	Actual sum paid	Amount to be paid after deducting excess amount	Excess amount paid	Notes	Due date for payment	Actual payment date as per TAR
1	Apr, 17	28,42,374	29,53,126		1,10,752		15-May-17	02-May-17
2	May, 17	28,44,081	28,76,186	27,33,329	1,42,857		15-Jun-17	30-May-17
3	June, 17	29,17,049	29,49,154	27,74,192	174,962		15-Jul-17	29-Jun-17
4	Jul, 17	29,00,674	29,14,759	27,25,712	189,047		15-Aug-17	01-Aug-17
5	Aug, 17	29,06,405	29,30,252	27,17,358	2,12,894		15-Sep-17	01-Sep-17
6	Sep, 17	27,22,439	28,65,587	25,09,545	3,56,042		15-Oct-17	03-Oct-17
7	Oct, 17	28,94,089	29,56,937	25,38,047	4,18,8990		15-Nov-17	-02-Nov-17
8	Nov, 17	28,59,560	29,30,467	24,40,670	4,89,797	Amount paid in advance to an extent of Rs.4,18,890 has to be allowed as deduction	15-Dec-17	02-Jan-18
9	Dec, 17	28,64,695	55,14,468	23,74,898	31,39,570		15-Jan-18	04-Jan-19
10	Jan, 18	28,44,315	25,76,361	-2,95,255	28,71,616	The sum deposited in advance is much more than the sum received from the employees. Hence the entire disallowance has to be deleted.	15-Feb-18	20-Feb-18
11	Feb, 18	28,98,290	26,674	26,674		Amount of Rs.25,76,361/-	15-Mar-18	03-Apr-18
12	Mar, 18	28,90,710	29,32,529	228,90,710	41,819		15-Apr-18	03-Apr-18

Note:

1 For the Month of Nov 2017 (SI No.8), A sum of Rs.4,18,890 has to be allowed as a deduction. Since payment was made in advance. The balance of Rs.24,40,670/- may be disallowed.

2. An excess sum of Rs.31,39,570 was already deposited in the EPF account which covers the entire sum received from employees for the month of Jan, 2018 (SI No. 10) and balance of Rs.2,95,255/- has to be adjusted for the Month of Feb, 2018 (SI No. 11).

3 A sum of Rs.25,76,361/- was deposited on EPF account on 20th Feb, 2018 (See pg 40 of the paper book). In addition to that Rs.2,95,255/- was already in excess in the account. So sum of Rs.28,71,616/- has to be allowed as deduction. Hence balance Rs.26,674/- which was paid post the due date has to be disallowed.

4. Total disallowance made by AO u/143(1) Rs.86,02,165/-
Deduction has to be allowed as explained above Rs.61,34,821/-
Balance disallowance may be upheld of Rs.24,67,344/-

Prayer



*ITA No.307/Mum/2023
A.Y. 2018-19
Roche Products (India)*

Direction may be given to the AO/CPC to verify the bank statement of assessee and grant deduction of amount to an extent of excess amount paid in the previous month and payment made before the due date.”

3. Drawing our attention to Serial No. 8 (November), the Ld. AR pointed out that an amount in the form of advance to the extent of Rs.4,18,890/- has been deposited by assessee in excess, therefore, in the month of Nov, 2017, the said amount has to be allowed as deduction and balance amount of Rs 24,40,670/- may be disallowed. Likewise, in Serial No. 9, the excess deposit made in Dec, 2017 is Rs.31,39,570/-, therefore, deduction need to be given for the month of January 2018 and Rs 2,95,255/- for February 2018. Likewise, in the month of Feb, 2018, a sum of Rs 25,76,361/- & Rs 2,95,255/- (Total Rs 28,71,616/-) which should be allowed as deduction. Thus, according to the Ld. AR, from the working given under the Chart supra the assessee should be allowed deduction of Rs.61,34,821/- in place of Rs.86,02,165/- and balance disallowance of Rs 24,67,344/- be confirmed u/s 36(1)(va) of the Act.

4. The grounds of appeal of the assessee is as under: -

“The appellant objects to the order dated 9 December 2022 passed by the Hon’ble National Faceless Appeal Centre (NFAC), Dethi [‘ld. CIT(A)’] on the following grounds:

1. The ld. CIT(A) has erred in law and on facts in confirming upholding disallowance u/s 36(1)(va) of the Income Tax Act, 1961 (‘the Act’) in respect of delay in payment of employee’s contribution to provident fund amounting to Rs. 86,02,165/-.

The ld. CIT(A) ought to have appreciated the following:

a) Employee’s contribution to provident fund deposited before the due date of filing of return of income is allowable u/s 43B of the Act.



ITA No.307/Mum/2023
A.Y. 2018-19
Roche Products (India)

- b) Amendment to section 36(1)(va) of the Act vide Finance Act, 2021 is prospective and effective from 1 April 2021 i.e. AY 2021-22.
- c) Disallowance of employee's contribution to provident fund u/s 36(1)(va) of the Act vide intimation u/s 143(1) is bad in law.

2. The Ld. CIT(A) has erred in passing order u/s 250 of the Act without granting personal hearing to the appellant and not following the procedure laid down under the Faceless Appeal Scheme, 2021. The Ld. CIT(A) failed to provide an opportunity of being heard thereby violating principles of natural justice.
3. Without prejudice to above grounds, the Id. CIT(A) has erred in law in disregarding the fact that there is error in amount of disallowance made towards employee's contribution to provident fund to the extent of Rs. 61,34,821 and disallowance shall be Rs. 24,67,344/-."

5. Before us, the assessee has only pressed ground no. 1 (supra), in the light of the Hon'ble Supreme Court decision in the case of Checkmate Services Pvt. Ltd. (supra) and pointed out that the assessee had deposited excess amount in the Employee's Contribution towards PF/ESIC in the relevant funds which according to the assessee need to be adjusted in the following months as shown in the chart (supra), and in case if assessee succeeds, then the assessee would be able to get part-relief to the tune of Rs. 61,34,821/-. After hearing both parties, even though, we agree in principle with the action of the CPC/Ld. CIT(A) in disallowing the belated deposits in the relevant funds in Employees Contribution towards PF/ESIC, it is noted from perusal of the chart (supra) that assessee has deposited excess amount in few months in the relevant PF/ESI government account, which according to us should be adjusted in the following month/months; and the AO



ITA No.307/Mum/2023
A.Y. 2018-19
Roche Products (India)

need to verify the facts as stated above and if it is found correct, then the benefit need to be granted to assessee. According to assessee, if excess deposit of Employee's Contribution in the relevant fund is adjusted with the following months contribution as per law, then assessee would be entitled to part-relief to Rs.61,34,821/- which fact AO to verify and after examination of relevant documents need to be decided in accordance to law. Therefore, we set aside the impugned order of the Ld. CIT(A) and restore this issue back to the file of the AO with a direction to examine/verify the relevant documents and examine whether assessee has deposited excess amount of employee's contribution in the relevant government account as asserted in the chart (supra) and if it is found to be correct then, suitable adjustment/deduction may be granted in accordance to law. Needless to say that proper hearing may be given to assessee and assessee is given liberty to file relevant documents to substantiate its claim in respect of Employee's Contribution which has been discussed supra.

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

Order pronounced in the open court on this 30/06/2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/06/2023.
Vijay Pal Singh, (Sr. PS)



*ITA No.307/Mum/2023
A.Y. 2018-19
Roche Products (India)*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**