

आयकरअपीलीयअधिकरण, विशाखापटणम "एसएमसी"पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.22/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2017-18)

Ours Youth Club
1-19-17, BC Colony Agraharam
Vizianagaram
[PAN : AAAA02600H]

Vs. Income Tax Officer
Ward-1
Vijayanagaram

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri C.Subrahmanyam, AR
: Shri O.N.Hari Prasada Rao, DR

सुनवाई की तारीख / Date of Hearing

: 21.06.2023

घोषणा की तारीख/Date of Pronouncement

: 24.07.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

Condonation of Delay :

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/250/2022-23/1037189689(1) dated 24.11.2021, arising out of assessment order passed u/s 143(3) of the Income Tax Act, 1961 (in short 'Act') dated 25.12.2019 for the Assessment Year (A.Y.) 2017-18 with the delay of 10 days. The assessee filed petition for

condonation of delay, submitting that the assessee was served with order u/s 250 of the IT Act on 24.11.2021 and the appeal ought to have been filed on or before 23.01.2022, but the same was filed on 02.02.2022 with the delay of 10 days as the President of the AOP Mr.Sivasankara Veera Prasada Rao Palla was affected with viral fever and undergone treatment from 20.01.2022 till 31.01.2022, hence, he was not available to sign the appeal papers. The appeal papers could be signed after his recovery and filed before the Tribunal on 02.02.2022 with the delay of 10 days. He, therefore, pleaded to condone the delay as it was not deliberate.

I have gone through the condonation petition filed by the assessee and I find there is a genuine and reasonable cause for filing the appeal belatedly. I, therefore condone the delay and admit the appeal for hearing.

2. Brief facts of the case are that the assessee, an Association of Persons, registered as Society is engaged in the business of supply of manpower to the Government Sectors like municipalities, hospitals etc. It receives payments from such organizations for supply of manpower and the society in turn pays the same as salaries to the employees after deduction of statutory dues such as PF, ESI etc. The society charges minimal amount as commission for supply of work force. The society is

established for helping the unemployed people by providing work and it acts merely as mediator between the workforce and the organizations. The assessee makes payment of salaries and statutory payments before it gets amount from the principal employers and there is no chance to claim excess expenditure as all payments are routed through banks only. For the A.Y.2017-18, the assessee had filed return of income admitting business income of Rs.3,91,792/- before the due date specified u/s 139(1). A notice u/s 143(2) was issued on 09.08.2018 to verify the contribution to provident fund, superannuation fund or gratuity fund. In response to the notice, the assessee submitted response attaching the bank statements for producing the proof of salary payments to sweepers and payments to PF, ESI and other relevant expenditures for the A.Y.2017-18 on 25.09.2018. The AO issued notices u/s 142(1) dated 26.02.2019 and 05.12.2019 and called for information, which the assessee submitted. Later, show cause notice dated 18.12.2019 was issued, but the assessee could not respond due to time constraints and personal difficulties. Hence, the AO passed assessment order disallowing the expenditure of Rs.33,50,827/- out of total contribution to PF and ESI at Rs.1,21,90,565/-, being excess of statutory limit of 27% of salaries of Rs.88,44,738/- for the A.Y.2017-18.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) partly allowed 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 nine grounds of appeal, which were later revised by filing a petition for revising the grounds of appeal as the original grounds raised in Form 36 lack clarity on the issue which the assessee is contesting and besides the grounds are not in orderly manner.

The revised grounds of appeal are as under :

1. *The Ld.Commissioner of Income Tax (Appeals) upheld the addition of Rs.33,50,827/- on the wrong premise by applying provisions of section 36(1)(va) of the IT Act when the Ld.Assessing Officer disallowed the subject impugned amount under rule 87 of Part XII - 'Approved Supperannuation Fund' - of the Income Tax Rules, 1962. This way the Ld.CIT(A) without applying himself decided the issue in a summary manner.*

2. *The Ld.CIT(A) failed to understand the issue of disallowance made by AO under rule 87 of Part XII, instead, misdirected himself in upholding the disallowance by applying provisions of section 36(1)(va) r.w.s. 2(24)(x) of the IT Act.*

3. *The Ld.CIT(A) ought to have given a finding that the disallowance of the amount of Rs.33,50,827/- under rule 87 of Part XIII, has been wrongly calculated and if the calculation are made in the right manner, no such disallowance would be warranted.*

5. The assessee filed petition for admission of additional ground and pleaded to admit the same as it is legal ground. The additional ground reads as follows :

The Ld.Assessing Officer without issuing notice u/s 143(2) of the IT Act assumed jurisdiction and passed the order u/s 143(3) of the IT Act, therefore, the impugned order suffers from jurisdictional defect and such order is void-ab-initio and liable to be quashed.

6. The only issue involved in this appeal is disallowance of Rs.33,50,827/- made by the AO, which was upheld by the Ld.CIT(A). At the outset, the Ld.AR submitted that the AO made the disallowance, relying on rule 87 of Income Tax Rules, 1962 and the Ld.CIT(A) adjudicated the issue taking provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Act. The Ld.AR further submitted that the rule 87 of the Income Tax Rules, 1962 falls under Part XIII-‘Approved Superannuation Fund’, the word ‘annual contribution’ in the said rule refers to contribution made by the employer in a year towards Superannuation fund of the employee and it does not apply to PF contributions. The Ld.AR further submitted that the annual contribution of employer towards superannuation fund cannot exceed 27% of salary minus employer’s contribution made to Provident Fund. The Ld.AR further submitted that the AO while applying the rule 87, has calculated 27% on the total salary

and compared the same with contribution to ESI and PF to arrive at the excess contribution, which he worked out at Rs.33,50,827/- which is not correct. Taking my attention to page No.5 of the paper book, the Ld.AR has shown the calculation made by the AO and correct calculation as per rule 87 in a tabulated manner and pleaded that the disallowance made by the AO deserves to be deleted. The Ld.CIT(A) disallowed the contributions made towards PF and ESI at Rs.21,72,171/- as it relates to previous year and for the balance amount of Rs.11,78,666/- (Rs.33,50,827 – Rs.21,72,171/-) directed the AO to verify whether the payments were made within the due dates and allow the same from the perspective of section 36(1)(va), 2 (24)(x) and 43B of the Act, which is not correct. He, therefore, pleaded to set aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee on this ground.

6. The Ld.DR also conceded that rule 87 of IT Rules falls under Part XIII-Approved Superannuation Fund and not applicable to assessee's case.

7. I have heard both the parties and perused the material placed on record. In the instant case, it is undisputed fact that the assessee had made contribution of Rs.1,21,90,565/- in respect of PF and ESI

amounting to Rs.99,23,938/- and Rs.22,66,627/- respectively. The assessee was asked to furnish information with evidence with regard to expenditure claimed towards contribution made towards superannuation fund or provident fund exceeding the statutory limit of 27% of salaries. The Ld.AR contended that no disallowance is warranted as per rule 87 of IT Rules and the disallowance made by the AO deserves to be deleted. The rule 87 of Income Tax Rules, 1962 falls under Part XIII- Approved Superannuation Fund, which reads as under :

“The ordinary annual contribution by the employer to a fund in respect of any particular employee shall not exceed [twenty-seven]percent of his salary for each year as reduced by the employer’s contribution, if any, to any provident fund (whether recognized or not) in respect of the same employee for that year.”

In the instant case, it is observed that the AO applied 27% on salary without reducing PF from salary and compared with the total contribution of PF and ESI superannuation fund and arrived at the excess contribution of Rs.33,45,827/-, which is not correct. The AO ought to have reduced PF from salary while applying 27% on salary and compared with the superannuation fund. The Ld.DR also fairly conceded that rule 87 of IT Rules is not applicable to the assessee’s case. Therefore, I hold that the word “annual contribution” in the said rule refers to contribution

made by the employer in a year towards Superannuation fund of the employee. I find that the AO had erroneously applied Rule 87 of IT Rules, calculated 27% on the total salary and compared with the contribution to ESI and PF to arrive at the excess contribution of Rs.33,50,827/-, which was upheld by the Ld.CIT(A). I, therefore, set aside the orders passed by the lower authorities and allow the appeal of the assessee.

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

Order pronounced in the open court on 24th July, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 24.07.2023
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Ours Youth Club, 1-19-17, BC Colony Agraharam, Vizianagaram
2. राजस्व/The Revenue – The Income Tax Officer, Ward-1, Income Tax Office, Koppu Gurranna Building, Siddharthanagar, Vijayanagaram
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