

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 531/Del/2023, A.Y. 2017-18

Wings Biotech LLP C/o. Anil Jain DD & Co., 611, Surya Kiran Building, 19K.G. Marg, Delhi PAN : AAAFW9631P	Vs.	ACIT Circle-44(1) New Delhi
Appellant		Respondent

Assessee by	Sh. Anil Jain, CA
Revenue by	Sh. Amit Katoch, Sr. DR

Date of hearing:	02.08.2023
Date of Pronouncement:	07.08.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 19.01.2023 of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Order No. ITBA/NFAC/S/250/2022-23/1048913110(1) arising out of an appeal before it against the order dated 07.08.2020 passed u/s 154 r.w.s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-44(1), Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. The assessee has raised following grounds ;

“1. That on the facts and circumstances of the case and the provision of law the Ld. CIT (A) has failed to appreciate that impugned order passed U/s 154 of the IT Act, is illegal, bad in law, without jurisdiction and contrary to the facts.

2. That the Ld. CIT (A) has failed to appreciate that the impugned rectification order passed by the Ld AO is against the principles of natural justice and has been passed without affording reasonable opportunity of being heard.

3. That on the facts and circumstances of the case and the provisions of the law, the Ld. CIT (A) has failed to appreciate the fact that the Ld. AO has erred in disallowing the payment of Rs.22,19,980 made on account of employees share to ESIC and PF.

4. That without prejudice to the above ground, the payment made on account of employees share to ESIC & PF is allowable as business expenses u/s 37(1) of the IT Act.

5. That the Ld. CIT (A) has failed to appreciate the fact that the learned assessing officer has erred in law in charging of interest u/s 234B and 234C of the IT Act.

6. That the appellant craves leave to reserve to itself the right to add, alter amend, vary, modify and/or withdraw and ground(s) of appeal at or before the time of hearing.”

4. At the time of arguments it was submitted on behalf of the assessee that in regard to three entries of due date of payment 15.05.2016 the actual date of payment 16.05.2016 being Sunday, Ld. Tax Authorities have failed to appreciate that and made disallowance. In this regard taking into consideration Section 10 of General Clauses Act to the deposit on 16.05.2016, the said deposits cannot be considered to be deposited after due date of deposit.

4.1 Further, it comes up that even otherwise the case of assessee is that assessee unit is entitled for deduction u/s 80C and the income to extent of 25% in the 8th year of operation is allowable for exempt. This aspect however does

not appear from the material before the Bench and requires examination of issue.

5. Accordingly, the grounds with regard to the disallowance u/s 36(1)(va) of the Act to the extent of deposit dated 16.05.2016 is allowed while in regard to remaining delayed deposits, the reliance of Ld. CIT(A) on the decision of hon'ble Supreme Court in **Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC)** requires no interference. **Consequently, the appeal of assessee is allowed partly.** The Ld. AO shall also take into consideration the claim of assessee for the purpose of Section 80IC of the Act and extend the relief as per the entitlement of the assessee, qua the additions also.

Order pronounced in the open court on 07th August, 2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-07.08.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI