

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

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 282/Mum/2022
(Assessment Year: 2018-19)

| | | |
|---|-----|-------------------------|
| TUV Sud South Asia Pvt. Ltd. 1, TUV House, Off Saki Vihar Road, Saki Naka, Mumbai – 400 072 | Vs. | CIT, NFAC, New Delhi |
| PAN/GIR No. AABCT 0716 G | | |
| (Appellant) | : | (Respondent) |
| Assessee by | : | None |
| Revenue by | : | Ms. Richa Gulati |
| Date of Hearing | : | 29.05.2023 |
| Date of Pronouncement | : | 07.08.2023 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2018-19.

2. The assessee has challenged the following grounds of appeal:

1. *On the facts and circumstances of the case, the ld. CPC/A.O./CIT(A) has erred in law on simultaneous proceedings under the provisions of section 143(2) and issuance of intimation under section 143(1) are not permissible as per the provisions of the Income Tax Act.*
2. *On the facts and circumstances of the case, the ld. CPC/A.O./CIT(A) has erred in law by not following the doctrine of merger i.e. once the assessment order is passed under section 143(3) of the Act, it overrides the order passed under section 143(1) of the Act.*

3. As there was no representation on behalf of the assessee, we hereby proceed to dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

4. The brief facts are that the assessee is a private limited company which is wholly owned subsidiary of TUV Sud Asia Pacific Pvt. Ltd. The assessee company is engaged in the business of quality certification, inspection and testing company in India having its headquarter in Mumbai and various branches across India. The assessee filed its return of income dated 30.11.2019, declaring total income at Rs.20,62,05,830/- and the same was processed u/s. 143(1) of the Act dated 22.11.2019 where the A.O./CPC made an addition of Rs.35,99,592/- being the employees contribution to PF & ESIC deposited belatedly after the due date prescribed under the relevant Acts but before filing of the return of income.

5. The assessee was in appeal before the first appellate authority challenging the order passed u/s. 143(1) of the Act by the A.O./CPC and the Id. CIT(A) vide order dated 16.12.2021 upheld the addition made by the A.O./CPC u/s. 143(1) of the Act.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. We have heard the submission of the learned Departmental Representative ('Id.DR' for short) and perused the materials available on record. It is observed that during pendency of the first appellate proceeding, the assessee vide letter dated 04.05.2021 had sought to withdraw the appeal filed before the Id. CIT(A) on the ground that the assessee's case was selected for limited scrutiny u/s. 143(3) of the Act and the A.O. after

due verification of the submission made by the assessee passed the assessment order u/s. 143(3) of the Act.

8. It is observed that the Tribunal vide order dated 21.06.2022 deleted the addition made by the A.O./CPC u/s. 36(1)(va) of the Act by relying on the decision of the Tribunal in the case of *M/s. Kalpesh Synthetics Pvt. Ltd. vs. DCIT* in ITA No. 1785/Mum/2021 vide order dated 27.04.2022). The Revenue filed a miscellaneous application to recall the said order subsequent to the decision of the Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. vs. CIT* (in Civil Appeal No. 2833 of 2016 vide order dated 12.10.2022) where it was held that the delayed deposit of employees contribution to PF & ESIC after the due date under the relevant Acts is no more an allowable deduction and the said order was then recalled by the Tribunal vide order dated 20.03.2023 in MA No. 7/Mum/2022. The assessee in its submission has stated that the Id. CIT(A) has erred in upholding the addition made by the A.O./CPC u/s. 143(1) of the Act where the assessee's case during the pendency of the appeal before the Id. CIT(A) was selected for scrutiny and the A.O. vide order u/s. 143(3) has accepted the returned income filed by the assessee. The assessee further contended that where the assessment order u/s. 143(3) of the Act was passed, there can be no possibilities of proceeding with the appeal against the 143(1) order for the reason that section 143(1) order merges with the order passed u/s. 143(3) of the Act. The Id. CIT(A) has held that the assessee's case was selected for limited scrutiny assessment where the issue was :

1. Claim of any other amount allowable as deduction in schedule BP
2. Default in TDS and disallowance for such defaults
3. Refund claimed

9. The Id. CIT(A) has stated that the disallowance made by the CPC u/s. 36(1)(va) of the Act was not part of the scrutiny assessment and had not been allowed by the A.O. in section 143(3) order, as alleged by the assessee. The Id. CIT(A) further held that the doctrine of merger would apply only with reference to an order of the superior authority and not the A.O. who has not vested with the power to review his own orders. The Id. CIT(A) further held that the A.O. could not have reviewed his order when the matter was subject of appeal before the Id. CIT(A) and moreover, the issue u/s. 143(3) was not the disallowance made u/s. 36(1)(va) of the Act. The Id. DR brought our attention to the facts iterated by the Id. CIT(A) and the various decisions where multiple proceedings can be carried out against the same assessment order but on different subject matters. The Id. DR relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Amrutlal Bhogilal & Co.* [1958] 34 ITR 130 (SC), *Estate of Madras vs. Madurai Mills Co. Ltd.* 1967 AIR 681.

10. From the above observation, it is evident that the assessee has not brought on record anything to substantiate the fact that the disallowance u/s. 36(1)(va) of the Act was a subject matter before the A.O. during the 143(3) proceeding. As the issue of disallowance made on the employees contribution to PF & ESIC deposited after the due date prescribed under the relevant Act but before filing of the return of income was already a settled proposition of law, subsequent to the decision of the Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd.* (supra) and since the assessee has not raised it as the ground before us, we are not inclined to interfere with the order of the Id. CIT(A) on this issue.

11. Ground nos. 1 & 2 raised by the assessee pertaining to the doctrine of merger will not be applicable in the present case for the reason that the issue before the A.O. in the 143(3) scrutiny assessment was different from that the disallowance made by CPC u/s. 143(1) of the Act. We, therefore, find no infirmity in the order of the Id. CIT(A).

12. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 07.08.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 07.08.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai