

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1381/M/2023  
Assessment Year: 2020-21**

M/s. Barron Plastics Pvt. Ltd., 3, Narayan Niwas, 10/12, Jambulwadi, Kalbadevi, Mumbai – 400 002 <b>PAN: AAACB5104B</b>	Vs.	ITO Ward-4(1)(3), Aayakar Bhawan, Mumbai, Maharashtra
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Ashok Mehta, A.R. &  
Ms. Vaidehi Mehta, A.R.

Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 11 . 07 . 2023

Date of Pronouncement : 28 . 07 . 2023

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

The assessee by filing the present appeal, sought to set aside the impugned order dated 23.11.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2020-21 on the grounds inter-alia that :-

*"1. The learned assessing officer and learned CIT(A) erred in assessing the income at Rs.48,07,710/- Instead of returned income of Rs.25,34,090/-.*

*2. The learned assessing officer and learned CIT(A) erred in adding Rs.22,67,620/- u/s 143(1) on issues which are debatable and failed to*

*consider the accepted legal decisions by the Supreme Court in the case of KVAVERNER JOHN BROWN ENGG.(INDIA) (P) LTD. VS ASSISTANT COMMISSIONER OF INCOME TAX (Supreme Court) 305 ITR 0103. 3. The learned CIT(A) erred in addition of Rs. 3,159/- u/s 36 (1)(va) not following the judgment of M/s P.R.Packaging Services (ITA No. 2376/Mum/2022, dt. 7-12-2012) which stated such disallowance cannot be made in 143(1).*

*4. The learned assessing officer and learned CIT(A) erred in addition of Rs.7,54,186 paid as bonus and commission to employees in spite the same being shown as paid before due date of furnishing return of income in the audit report. 5. The learned assessing officer and learned CIT(A) erred in addition of Rs. 11,09,807 being duty and cess paid in spite the same being shown as paid before due date of furnishing return of income in the audit report.*

*6. The learned assessing officer and learned CIT(A) erred in addition of Rs. 13,225 being employer's contribution to ESI and PF in spite the same being shown as paid before due date of furnishing return of income in the audit report. 7. The learned assessing officer and learned CIT(A) erred in addition of Rs. 3,87,242 being leave encashment in spite the same being shown as paid before due date of furnishing return of income in the audit report.*

*8. The Learned CIT-Appeals erred in not providing an opportunity of being heard even though it was requested by the assessee in its letter dated 13.10.2022 not considering the judgment of Chandubhai Waghela vs NFAC (Gujarat High Court Special Civil Application No 8552 of 2022).*

*9. The assessee craves leave to add, alter amend or delete any of the above grounds of appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the return of income filed by the assessee for the year under consideration declaring total income at Rs.25,34,090/- was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act') by the Central Processing Centre (CPC)/Assessing Officer (AO), Bangalore at the total income of Rs.48,07,710/- by making disallowance of Rs.7,725/- and Rs.5,500/- on account of employees' contribution on account of Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) contribution respectively. The AO also made an addition of

Rs.11,09,807/- on account of duties and cess and thereby made the total addition of Rs.22,67,620/- under section 36(1)(va) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset the Ld. A.R. for the assessee contended that both AO as well as the Ld. CIT(A) have made/confirmed the addition of Rs.22,67,620/- under section 36(1)(va) of the Act without going into the detail brought on record by the assessee rather employer's contribution to PF & ESIC has also been disallowed. The AO has also made the addition on account of duties and cess of Rs.11,09,807/- which include TDS, GST and professional tax by ignoring the fact that the same has been paid before the due date. The Ld. A.R. for the assessee brought on record detail of the addition made by the AO/confirmed by the Ld. CIT(A) in tabulated form as under:

Sr No.	Particulars	Disallowance Amount
1.	360)(va)~(Groundno3)	3,159/-
2.	Bonus to Employees - (Ground no 4)	7,54,186/-

3.	Professional Tax	7,300/-
	GST	3,626/-
	TDS	1 0,98,881/-
	TOTAL -Duties & Cess-(Ground NO, 5)	11,09,807/-
4.	Employers Contribution to PF	7,725/-
	Employers Contribution to ESI	5,500/-
	TOTAL -/Ground no 6)	13,225/-
5.	Leave Encashment to employees (Ground no 7)	3,87,242/-
Total		22,67,620/-

6. I have perused the order passed by the Ld. CIT(A) who has completely ignored the factual position. So far as ground No.3 raised by the assessee is concerned the assessee has deposited employees' contribution of PF & ESIC to the tune of Rs.3,159/- after due date prescribed under the Act. The Ld. A.R. for the assessee relied upon the decision rendered by Co-ordinate Bench of Tribunal in M/s. P.R. Packaging Services in ITA No.2376/Mum/2022, dt.7-12-2012. However, I am of the considered view that in view of the decision rendered by Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. vs. CIT order dated 12.10.2022 argument addressed by the Ld. D.R. on the basis of order passed by the Tribunal in case of M/s. P.R. Packaging Services (supra) is not sustainable and the AO/Ld. CIT(A) have rightly made/confirmed the disallowance under section 36(1)(va) of the Act.

7. However, the AO/ Ld. CIT(A) have made addition of Rs.11,09,807/- on account of duties and cess including TDS, GST and professional tax without examining the factual position. I have perused form 3CD available at page 88 of the paper book, TDS challan available at page 51 to 58, professional tax challan available at page 49 and GST challan available at page 50 which show that the assessee has paid the same before the due date. So issue is required to be remanded back to the AO to decide afresh and allow the same after due verification.

8. Similarly so far as addition of Rs.7,54,186/- made by the AO and confirmed by the Ld. CIT(A) on account of bonus to employees is concerned, again the same has been disallowed without examining the factual position as per bank statement reflecting the aforesaid payment available at page 59 to 72 of the paper book having been made within time. So this issue is also required to be re-examined by the AO and to be decided afresh after providing opportunity of being heard to the assessee.

9. So far as disallowance of Rs.13,225/- on account of employer's contribution of PF & ESIC is concerned, again it is the case of the assessee that the same has been paid before due date prescribed under the Act and drew my attention towards PF & ESIC challan available at page 73 to 88 of the paper book which prima-facie shows that the same has been deposited before the due date. The AO is directed to verify the same and allow if the same found to be deposited before the due date prescribed under the Act. Furthermore, so far as addition of Rs.3,87,242/- on account of leave encashment paid to the employees is concerned, the Ld. A.R. for

the assessee contended that the same has also been paid before the due date of furnishing return of income in the audit report. Perusal of the leave encashment and bonus to the employees statement along with bank statement available at page 59 to 72 of the paper book shows that the same has been paid before the due date of furnishing the return of income in the audit report. The AO is directed to verify the same and decide the issue after providing opportunity of being heard to the assessee.

10. In view of what has been discussed above, I am of the considered view that both the AO as well as the Ld. CIT(A) have erred in making all the additions except addition of Rs.3,159/- being the deposit of employees' contribution of PF & ESIC, without examining the factual position under section 36(1)(va) of the Act. Rather this is a complete miscarriage of justice on the part of the Lower Revenue Authorities. So in view of the matter the case is remanded to the AO to decide afresh after providing opportunity of being heard to the assessee in view of the observations made herein before.

11. Resultantly, the appeal filed by the assessee is hereby partly allowed.

**Order pronounced in the open court on 28.07.2023.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 28.07.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.