

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.124/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2019-20)**

Shree Poly Films Private Limited
D.No.50-53-11/10
Revathi Vihar Apartment
Seethammadhara, Visakhapatnam
[PAN : AALCS3403K]

Vs. DCIT/ACIT
Circle-3(1)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: None
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 14.09.2023

घोषणा की तारीख/Date of Pronouncement

: 21.09.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

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/250/2022-23/1042510271(1) dated 05.04.2022, arising out of assessment order passed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act') dated 29.06.2020 for the Assessment Year (A.Y.) 2019-20.

2. Brief facts of the case are that the assessee is a firm, filed its return of income on 30.10.2019 for the A.Y.2019-20, declaring taxable income of Rs.19,08,370/-. However, the Centralized Processing Centre (CPC) had processed the return of income u/s 143(1) vide its order dated 29.06.2020 and disallowed an amount of Rs.4,19,767/- towards delayed remittance of employees contribution of EPF of Rs.3,57,519/- and ESI of Rs.62,248/-.

3. Aggrieved by the order of the CPC, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) dismissed 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 the following grounds of appeal :

1. On the facts and in the circumstances of the case the order of the learned Commissioner of Income Tax (Appeals) erroneous in law and facts of the case.

2. On the facts and in the circumstances of the case the learned Commissioner ought to have appreciated that the provisions of section 2(24)(x) read with section 36(1)(va) and Section 43B of the Income Tax Act, 1961, being late deposit of Employees contribution towards ESIC/EPF amounting Rs.4,19,770.00 which has been duly deposited on or before the due date of filing of return of income as per the provisions under section 139(1) of the Income Tax Act, 1961. Employee contribution towards ESI and PF paid after the due date of the respective statute but before the filing of Income Tax Return due date u/s 139(1) is allowed under section 43B and should not be disallowed u/s 36(1)(va).

3. *On the facts and in the circumstances of the case the learned Commissioner ought to have appreciated that amendments brought in Finance Act, 2021 in the provisions of section 36(1)(va) and 43B of the Income Tax Act, 1961 shall be applicable w.e.f. 01.04.2021. Thus, Explanation 2 and Explanation 5 in section 36(1)(va) and section 43B of the Income Tax Act, 1961 respectively shall be deemed to have prospective effect and shall not be applicable for AY 2019-20.*

4. *The appellant craves leave to add to, alter, amend, substitute, delete, modify all or any of the above grounds.*

5. None appeared on behalf of the assessee. The only issue raised in the grounds of appeal is that the AO as well as the Ld.CIT(A) are not justified in disallowing the deposits made by the assessee towards PF / ESI before the due date of filing the return of income u/s 139(1) of the Act, though the same could not be paid within the due dates specified under PF Act and ESI Act and the same ought to have been allowed as deduction u/s 43B of the Act

6. The Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal filed by the assessee.

7. I have heard the Ld.DR and perused the material available on record. Now the law is settled after a view had been taken by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., in Civil Appeal

No.2833 of 2016, order dated 12.10.2022. In the case on hand also, the assessee made remittances before filing the return of income u/s 139(1), but not within the due date specified by the respective PF / ESI Acts. For the sake of clarity and convenience, relevant part of the order of hte Checkmate Services Pvt. Ltd.(supra) is extracted as under :

“They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income is treated as a deduction. Thus, it is an essential condition for deduction that such amounts are deposited on or before the due date.”

Since the decision of the Hon’ble Supreme Court pronounced the correct legal position of the allowability of belated payment of PF and ESI under the provisions of the Act, I have no hesitation to come to a conclusion that the disallowance made by the AO as well as the Ld.CIT(A) needs no interference, in view of the decision of the Hon’ble Supreme Court mentioned supra.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 21st September, 2023.

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

Dated : 21.09.2023
L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s Shree Poly Films Private Limited, D.No.50-53-11/10, Revathi Vihar Apartment, Seethammadhara, Visakhapatnam
2. राजस्व/The Revenue - The DCIT/ACIT, Circle-3(1), Infinity Towers Building, Shankaramatham Road, Santhipuram, Visakhapatnam
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