

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”: NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON’BLE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2858/DEL/2022
assessment Year: 2020-21**

Atul Ahuja, Plot No. 90, Sector-59, HSIDC, Faridabad-121004. PAN- ABFPA8915Q	<u>Vs</u>	DCIT Circle-1, Faridabad.
APPELLANT		RESPONDENT
Assessee represented by	Shri Rakesh Jain, Adv.	
Department represented by	Shri Kanv Bali, Sr. DR	
Date of hearing	28.08.2023	
Date of pronouncement	22.09.2023	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 14.10.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. NFAC/2019-20/10074146, for the assessment year 2020-21, arising out of the assessment order dated 29.11.2021 u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Centralized Processing Center, Bengaluru, (hereinafter referred in short as “Ld. AO”).

2. Heard and perused the record.
3. The assessee is an individual having income from Business and Profession besides being a partner in M/s ANA BOXKRAFTS and the Income from House Property for the A.Y. 2020-21. The assessee filed the return of income along with Tax Audit report u/s 44AB on Dt: 26.12.2020 by declaring an income of Rs. 43,73,086/- after claiming deduction under chapter VI-A of Rs. 1,79,591/-. The proposal for adjustments u/s 143(1)(a) was communicated to assessee on 21.09.2021 and later on intimation u/s 143(1) dated 29.11.2021 was received by raising a demand of Rs. 10,30,160/-. In the intimation u/s 143(1), Income from Business and Profession has been increased from Rs. 63,71,640/-attributable to:-
 - a. Amount of Rs. 3,16,430/- u/s 36(1)(vii a) on account of late deposit of ESI/PF
 - b. An amount of Rs. 16,82,121/- being the share of loss has been added to the business income of the assessee.
4. The Ld. CIT(A) has sustained the addition for which the assessee is in appeal raising following grounds:-

“1. Because the action of making the adjustment u/s 143(1) while determining the amount to Rs 63,71,640/- and for Provident Fund, ESI for the employee's contribution that too deposited before the date of the return of income on dt 26.12.2020, hence action under' challenge on facts & law and the issue is highly debatable.

2. Because the action is under challenge both on facts and law for disallowing the amount of Rs. 16,82,121/- on account of wrong addition

being the share of loss of the firm having been set-off against the business income whereas ignoring the suo-moto addition of the same by the assessee in the return of income additionally none findings returned in the CIT(A) order.

3. *Because the action under challenge since the facts, pleadings and the principles of law furnished have not been examined in accordance with law as obligatory to assign the reasoning thereon, hence conclusion inapposite to the material on record and in violation to the case of Kranti Associates Pvt Ltd and Another vs Sh Masood Ahmed Khan and other (2010) 9 SCC 496 Para 17, 51.*

4. *Because to grant the consequential relief and or legal claim and to allow amendment, addition, deletion in the grounds before the disposal of the Appeal with a further prayer to take a decision in accordance with law.*

5. **Ground no 1:** At the time of hearing, learned AR has stated that he is pressing the ground with regard to two deposits of 16.09.2019 qua the Provident Fund and ESI contributions, the due date of payment of which was 15.09.2019, and the same was Sunday. He thus submitted that qua these two deposits the assessee is entitled to benefit of Section 10 of the General Clauses Act, 1887.

5.1. Learned DR, however, submitted that as the Income Tax Act is a Special Act and the Hon'ble Supreme Court in the Bunch case of **CheckMate Services (P.) Ltd. Vs. CIT in Civil Appeal No. 2833 of 2016 & others dated October 12, 2022**, has not given any relaxation of time, therefore, assessee is not entitled to benefit of section 10 of the General Clauses Act.

5.2. Now Section 10 of the General Clauses Act provides for computation of time in regard to every action required to be done under any law on a certain day or

within prescribed period and if the court or office is closed on that day or the last day of the prescribed period, the Act or proceedings shall be considered as done or taken in due time, if it is done or taken on the next day afterwards on which the court or office is opened. The only exception to same is that the Section 10 shall not apply to any Act or proceedings to which the Indian Limitation Act, 1877 applies. Specifically it can be noticed that sub-section (2) of Section 10 provides that this section applies also to all Central Acts and regulations made on or after the fourteenth day of January, 1887.

5.3 The Bench is of considered view that as for the purpose of respective Acts under which assessee was supposed to deposit the contributions, the due date for payment on 15.09.2019 was holiday being Sunday so the deposit of contribution on 16.09.2019, have to be construed to be payment on the due date and thus the two deposits of 16.09.2019 have to be considered allowable. While in regard to remaining disallowances of delayed deposits, in the light of Hon'ble Supreme Court judgment in the case of **CheckMate Services (P.) Ltd. (supra)**, there is no error in the findings of Id. Tax Authorities below. Accordingly, the ground is allowed partly.

6. **Ground no 2:** It is submitted by Ld. AR that CPC has fallen in error in adding share of loss to the business income of the assessee although the assessee suo-moto added the same to the income after deducting it in the return of income

filed. Resulting the share of the loss from the firm M/s ANA BOXKRAFTS has been added to the income whereas the corresponding effect (suo-moto addition of the same by the assessee) has not been considered by the CPC. It is submitted that the details as provided by the assessee have been overlooked and adjustment has resulted into a tax demand of Rs. 10,30,163/-. Learned AR also pointed out that the intimation was u/s 143(1) of the Act and in the computation of income the assessee had shown the loss of the firm. However, at page no. 28 of the intimation under the head "Income credited to P&L A/c", which is exempt, addition of Rs. 16,82,121/- has been made.

6.1. Learned DR conceded the fact that it was a ground which was raised before the learned CIT(A), however, there is no discussion and no conclusive finding has been given.

6.2. The facts canvassed before us require verification specially as addition is made in intimation u/s 143(1) of the Act and there is no finding on the issue by learned CIT(A). Therefore it will be justified to restore the issue for verification before learned AO. Ld.AO shall take into consideration the aforesaid submission of the appellant/assessee and call for further information, if required, in this regard and then adjudicate the issue afresh. **Accordingly, ground no. 2 is allowed for statistical purposes.**

7. As a sequel to the aforesaid determination of the grounds in favour of the assessee, the appeal of the assessee, is **allowed partly**.

Order pronounced in open court on 22.09.2023.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI