

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G” DELHI**

**BEFORE CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1117/DEL/2023
Assessment Year 2019-20

Security Printing and Minting Corporation Of India Ltd. 16 th Floor, Jawahar Vypar Bhawan, Janpath, Cannought Place, Delhi-110001.	Vs.	ACIT, Circle-22(2) New Delhi
TAN/PAN: AAJCS6111J		
(Appellant)		(Respondent)

Appellant by:	Shri Y.K. Mahagan, Adv.		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	20	09	2023
Date of pronouncement:	20	09	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi [‘CIT(A)’ in short] dated 17.02.2023 arising from the assessment order dated 15.09.2020 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. The grounds of appeal raised by the assessee read as under:

“1. The order passed by Ld. CIT(A)/ NFAC on the facts and in the circumstances of the case is bad in law.

2. On the facts and in the circumstances of the case the Ld. CIT(A)/NFAC has erred in law by not adjustments the grounds raised in appeal but dismissing the appeal .The Ld. CIT (A)/NFAC has erred in law by directing the Ld. AO for verification of issues of adjustment made u/s.

143(1) without any further clear directions.

3. (i) *The Ld. AO (CPC) has erred in law and on facts by making adjustment of addition of Rs.199,78,054/- in the returned income by invoking section 36(1)(va) of IT Act 1961 when employees subscription to EPF is deposited before the due date of filing tax return prescribed under section 139(1) of the Act and duly covered in favour of appellant u/s. 43B(b) of the IT Act, 1961.*

4. (ii) *The Ld. Assessing Officer has erred in law and on facts in the circumstances of the case by adding a sum of Rs. 163,515/- u/s. 40A(9) of the IT Act, 1961.*

5. (iii) *The Ld. AO. has erred in law on the facts by not granting interest u/s. 244A for the period April 2019 to May 2020 for which appellant is entitled w/s 244A, thereby making a short allowance of interest by Rs.3,25,90,936/-.*

(iv) *The appellant assessee is also entitled for interest on unpaid amount of Rs.3,25,90,936/- till it is actually released by voucher as per section 244A as unpaid any amount of refund due partakes the character of basic tax refund due till it's release.*

6. (v) *The Ld. AO has erred in law by charging interest u/s 234C on leave encashment provision not offered to tax in original return being highly debatable issue in favour till settled by Hon'ble Apex Court in April 2020 in favour of revenue."*

3. The CIT(A) has taken into account the submissions made on behalf of the assessee and remanded the matter back to the file of the Assessing Officer for verification of claim of the assessee vis-à-vis the assessment made by the Assessing Officer with respect to return of income filed within the provisions of Section 143(1) of the Act. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

"In the given facts and circumstances of the case, when there is absolutely no clarity as to the reason for adjustment/ addition made in the order passed u/s. 143(1) of the Act by the CPC, and the assessee was apparently not even given an opportunity before making such addition/adjustment, the A.O. is directed to verify the claim of the appellant vis-a-vis the adjustments made by the CPC with respect to return of income filed in accordance with the section 143(1) of the Act. No need to emphasize that proper opportunity of being heard to the appellant must be given. At the same time, this is a matter of record that original returns / records and basis of adjustments are not with this office to come to a definite conclusion. In the absence of complete records, no definite inference can be arrived at with respect to

grounds of appeal raised before the undersigned. As such, nothing remains here to be adjudicated here. Hence, the appeal is treated as dismissed for statistical purposes with the directions to the A.O. as mentioned above.”

4. When the matter was called for hearing, the Id. counsel for the assessee submitted that two issues are involved in the present case;

(i) addition of Rs.1,99,78,054/- by invoking Section 36(1)(va) in respect of employees contribution to PF and ESIC and;

(ii) addition of Rs.1,63,515/- under Section 40A(9) of the Act towards contribution of the assessee to its employees association for welfare activities as per Maharashtra Labour Laws.

4.1 The Id. counsel referred to the submissions placed before the Tribunal submitted that assessee-corporation is a Central Public Sector Undertaking (CPSU) under the aegis of Ministry of Finance, Government of India. A Provident Fund Trust titled SMPCIL Employees Provident Fund Trust has been created and registered with the Provident Fund Authority and is also duly approved by the Income Tax Department. The assessee corporation credits the employees contribution as well as employers contribution of the Provident Fund to such Trust every month on 1st day of the subsequent month. Consequently, on transfer of funds to the trust, the compliance of Provident Fund Laws stand carried out and there is no delay in transferring the amount to the credit of Provident Fund Trust so created for the welfare of the employees. The Assessing Officer has proceeded based on mistaken reporting by the Tax Auditor *de hors* grounds realities. As a corollary, the employees contribution is deemed to have been paid within due date as specified under the relevant statute.

4.2 The Id. counsel thus submitted that the issue may be remanded back to the file of the Assessing Officer for verification of all relevant facts. Likewise, based on the wrong reporting in the Tax Audit Report, the Assessing Officer has made disallowance under Section 40A(9) on account of *bona fide* expenses incurred by way of contribution to employees association for welfare activities amounting to Rs.1,63,515/- as per the statutory mandate of Maharashtra Labour Laws. The expenses are not only genuine but necessary to sustain the business activity and to comply with the legislative mandate. Thus, Section 40A(9) has no application. The Id. counsel submitted that this issue also may be set aside to the file of the Assessing Officer for verification.

5. In the light of the submissions made on behalf of the assessee and also having regard to the observation made in the first appellate order, we deem it expedient to remit the matter back to the file of the Assessing Officer for examination of facts in relation to both the issues and their determination afresh in accordance with law. It shall be open to the assessee to adduce such evidences and explanations as may be considered to support its claim of allowability of deduction under Section 36(1)(va) and Section 40A(9) and reversal of adjustment carried out under Section 143(1) of the Act.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20/09/2023

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**