

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 808/KOL/2023
Assessment Year: 2017-2018**

***Hooghly Alloy & Steels Co. Pvt. Limited,....Appellant
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069
[PAN: AABCH5848R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-5(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri Siddharth Agarwal, A.R., appeared on behalf of the assessee

Shri B.K. Singh, JCIT (Sr. DR), appeared on behalf of the Revenue

Date of concluding the hearing : September 25, 2023

Date of pronouncing the order : September 25, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 9th June, 2023 passed for A.Y. 2017-18.

2. Though the assessee has taken four grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the addition of Rs.15,05,297/-, which was added by the ld. Assessing Officer by making a disallowance on the ground that employees' contribution was not paid to the P.F. & ESI Account within the due date provided under those Acts. Thus as per Section 36(1)(va), the ld. Assessing Officer has disallowed the claim and made the addition of Rs.15,05,297/-.

3. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

4. The ld. Counsel for the assessee, at the very outset, submitted that as far as disallowance of employees' contribution not paid within due date to respective P.F. & ESI Act is concerned, the controversy has been silenced by the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178 and there is no merit in the appeal of the assessee. However, he pointed out that out of the total addition of Rs.15,05,297/-, a sum of Rs.8,65,724/- pertains to employer's contribution and this amount

cannot be added because employer's contribution is to be allowed to the assessee as a deduction if paid before the due date of filing of the return. Therefore, he prayed that the issue be set aside to the file of ld. Assessing Officer for verification and re-adjudication.

5. On the other hand, ld. D.R. relied upon the order of ld. CIT(Appeals).

6. On due consideration of the facts and circumstances, we find that the assessee has raised a specific plea to this effect to the ld. CIT(Appeals) also, but ld. 1st Appellate Authority failed to take note of this fact, rather devoted 7-8 pages in deciding this simple issue. In her order, she takes note of theoretical explanation of the proposition of law that addition under section 36(1)(va) read with section 2(24)(x) can be made or not. The factual aspect has not been looked into. The ld. Assessing Officer has just processed the return of the assessee with the help of Software. Therefore, we remit this issue to the file of ld. Assessing Officer. The ld. Assessing Officer shall examine the facts and determine the amounts of employees' and employer's contributions separately. The disallowance under section 36(1)(va) read with section 2(24)(x) can be made with regard to employees' contribution to P.F. & ESI account if not paid within due date provided under those Acts. In case,

employer's contribution is also embedded in the total amount considered by the Id. Assessing Officer, then, that amount be excluded from the addition.

7. In view of the above, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on September 25, 2023.

**Sd/-
(Manish Borad)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 25th day of September, 2023

Copies to : (1) Hooghly Alloy & Steels Co. Pvt. Limited,
C/o. Subash Agarwal & Associates,
Advocates, Siddha Gibson,
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Kolkata-700069

(2) Income Tax Officer,
Ward-5(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069

(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi

(4) Commissioner of Income Tax ,

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.