

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1682/Mum/2022
Assessment Year: 2018-19**

M/s.Shree Mahalaxmi-
Krupa Services Pvt. Ltd.,
Shop No.12,
National Plaza C.H.S.Ltd.,
Plot No.144,
Takka Panvel, Raigarh,
Mumbai-410 206.

v. National Faceless Appellate Centre,
Delhi.

[PAN: AAUCS 7858 K]
(Appellant)

(Respondent)

Appellant by : Shri Fenil Bhat, AR
Respondent by : Shri Prakash D. Choughule, Sr.DR
Date of Hearing : 21.07.2023
Date of Pronouncement : 27.09.2023

ORDER

PER KULDIP SINGH, JM:

The appellant, M/s.Shree Mahalaxmi Krupa Services Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 03.06.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] *qua* the assessment year 2018-19 on the grounds inter alia that :-

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"1. The Commissioner (Appeals) erred in the order without considering the application of the assessee company dated 24th May, 2022 seeking adjournment and thus the order of the Commissioner (Appeals) is against the principles natural justice.

2. The Commissioner (Appeals) erred in confirming the addition of Rs.2,54,85,022/- u/s. 36(1)(va) r.w.s. 2(24)(x) of the I.T. Act, 1961, to the income of the assessee company being the employees' contribution to Provident Fund.

3. The Commissioner (Appeals) erred in not following the binding decision of the Supreme Court in the case of CIT v. Alom Extrusions Ltd. [(2009) 319 ITR 306 (SC)] and the Bombay High Court in the case of CIT v. Ghatge Patil Transports Ltd. (368 ITR 749, Bom.) wherein it was held that employees' contribution to Provident Fund deposited before the due date for filing the return of income of the assessee company cannot be disallowed and added to the income of the assessee.

4. The Commissioner (Appeals) erred in holding that the amendment made by the Finance Act, 2021 to section 36(1)(va) and sec. 43B of the Act are retrospective in effect and therefore, the employees' contribution to Provident Fund deposited by the assessee company after the due date prescribed under the Provident Fund Act is not allowable and it has to be added to the income of the assessee company.

5. The Commissioner (Appeals) failed to appreciate that the Finance Act, 2021 has made amendments to section 36(1)(va) and section 43B with effect from 1st April, 2021 and therefore, the said amendments have no application to the pending cases of the earlier years.

6. Commissioner (Appeals) erred in not appreciating that the Legislature has given effect to the amendments with effect from 1st April, 2021, that is, for the A.Y. 2021-22 and onwards and not to the earlier years.

7. The Commissioner (Appeals) erred in not following the decision of the Hon. Appellate Tribunal in the case of M/s. Valve Momentum Software Services Pvt. Ltd. v. DCIT in ITA No. 2197/Hyd/ 2017 dated 19th May, 2021.

8. The Commissioner (Appeals) erred in not considering the order of the Assessing Officer u/s. 154 of the Act in the case of the assessee company dated 25th August, 2021 whereby the Assessing Officer deleted the addition of Rs.1,41,69,962/- being the amount of employees' contribution to Provident Fund deposited prior to the date prescribed under the Provident Fund Act.

9. The order of the Commissioner (Appeals) is bad in law and without jurisdiction.

10. Your appellant craves leave to add to, alter, amend or delete any of the foregoing grounds of appeal."

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee being a private

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limited company filed its return of income for the year under consideration declaring total income of Rs.92,25,110/- which was processed under section 143(1) of the Income Tax Act, 1961 (for short 'the Act') at the total income of Rs.3,52,30,630/- by making disallowance of Rs.2,60,05,520/- being the delayed deposit made by the assessee towards employees contribution of Provident Fund (PF) under section 36(1)(va) of the Act. Thereafter, the case was subjected to scrutiny. Declining the contention raised by the assessee, the AO proceeded to disallow an amount of Rs.2,54,85,022/- being the contribution on account of PF deposited after the due date prescribed under the Act and thereby framed the assessment u/s.143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. 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. We have heard the Ld. Authorized 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.

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5. Undisputedly, the Id.CIT(A) vide impugned order by invoking provisions contained u/s.36(1)(va) r.w.s.43B of the Act, confirmed the addition of Rs.2,54,85,022/- made by the AO/CPC u/s.143(3) of the Act. It is also not in dispute that by now it is settled principle of law as per the decision rendered by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. v. CIT, order dated 12.10.2022, that employees contribution to PF deposited by the employer beyond the due date prescribed under the Act is not eligible for deduction.

6. In the back drop of the aforesaid undisputed fact, when we examine the statement of contribution received from employees and its payments made in the government Treasury, it is *prima facie* proved on record that out of amount of Rs.2,54,85,022/- disallowed by the Id.CIT(A), an amount of Rs.1,41,69,962/- has been deposited by the assessee being employees contribution on account of PF well within the period prescribed under the respective Act.

7. At the same time, it is also *prima facie* proved that out of amount of Rs.2,54,85,022/-, an amount of Rs.72,80,400/- was deposited by the assessee beyond the due date prescribed under the relevant Act, but well before the date of filing of Income Tax Returns. So, as per law, an amount of Rs.72,80,400/- is liable to be disallowed u/s.36(1)(va) of the Act. Similarly, out of amount of

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Rs.2,54,85,022/-, an amount of Rs.40,34,660/- as per revised Form No.3CD belongs to employer's contribution which is not to be disallowed.

8. In view of what has been discussed above, we are of the considered view that to examine and verify the factual position, the issue is required to be remanded back to the AO to decide afresh after due verification that out of total disallowance of Rs.2,54,85,022/-, made by the Id.CIT(A) only an amount of Rs.72,80,400/- is to be disallowed and remaining amount is to be allowed in the light of the findings returned hereinbefore by providing an opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 27th day of September, 2023, in Mumbai.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai,
Dated: 27th September, 2023.
TLN, Sr.PS (on Tour)

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Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR, ITAT, Mumbai
5. Guard File

// True Copy //

By Order

Dy./Asst. Registrar, ITAT, Mumbai