

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1318/Del/2021
(ASSESSMENT YEAR-2018-19)**

Inficare Software Technologies Pvt. Ltd. D-29, 2 nd Floor, Sector-2 Noida-201 301 Uttar Pradesh PAN-AADCI 1707L	Vs.	CIT(Appeals) National Faceless Appeal Centre (NFAC), Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Sahil Goyal, Adv.
Respondent by	Sh. Sandip Kumar Mishra, Sr. DR

Date of Hearing	12/10/2023
Date of Pronouncement	17/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 30/07/2021 for Assessment Year 2018-19. The Revised Grounds taken in this appeal are as under:

“As per the directions of this Hon'ble Tribunal, the modified grounds of Appeal in the present matter are as follows:

1. That the Ld. CIT has erred in passing the impugned order without appreciating the facts and submissions on record.

2. That the Ld. CIT has failed to appreciate that while adjudicating the penalty on delayed payments of employees contribution towards ESI and EPF Funds, the AO has taken the consolidated amount of employees' and employers' contribution in ESI and EPF funds. Respective charts are annexed herewith.

3. That the Ld. CIT has failed to appreciate that the Assessee has claimed a loss in current year to be carried forward to an amount of Rs. 1,29,061/- which has been disallowed by the AO.

4. That the Ld. CIT has failed to appreciate that the Assessee has claimed a tax refund of Rs. 28,050/- which has been disallowed by the AO without any reason.

5. That the Assessee craves leave to add/ modify any other grounds at the time of arguments.”

2. The brief facts of the case are that the assessee filed return declaring loss of Rs.-1,33,337/- and subsequently revised by declaring net loss of Rs.-1,29,061/-. While processing the return of income of the Assessee, the CPC, Bangalore, vide intimation dated 16/10/2019 disallowed Rs.13,21,995/- claimed by the Assessee on account of Employee's contribution in ESI and EPF as payment was made after belated due date in respective acts.

3. Aggrieved by the said intimation dated 16/10/2019, the assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 30.07.2021 dismissed the appeal filed by the assessee. As against the order of the Ld. CIT(A), the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee fairly submitted that the issue of allowability of belated payment to ESI and EPF has already been settled by the Hon'ble Supreme Court in the case of ***Checkmate Services Pvt. Ltd vs. CIT reported in 448 ITR 518***. On the other hand, the Ld. Counsel for the assessee submitted that the AO has taken the consolidated amount of Employees' and Employers' contribution in ESI and EPF while making disallowance and the Ld. CIT(A) has also not considered said actual factual aspect while confirming the disallowance. The Ld. AR has also provided the details/chart of consolidation of Employees and Employers' payment towards ESI and EPF for the year under consideration and sought for remanding the matter to the file of AO to decide the issue afresh.

5. The Ld. DR vehemently submitted that the disallowance have been made by the AO in accordance with the law and the assessee has not canvassed before the CIT(A) regarding consideration of the consolidated amount and employees' and employers' contribution in ESI and EPF by the A.O., therefore, submitted that the present appeal is liable to dismissed.

6. We have heard both the parties and perused the materials available on record. It is the case of the Assessee that the AO has erroneously consolidated amount of Employers' and Employees' contribution to ESI and EPF while adjudicating the penalty for belated payment of Employees' contribution towards ESI and EPF and to substantiate the claim, the Ld. A.R provided the details/chart reflecting the payments made by the Assessee. Considering the above facts and circumstances and the submissions made by the Ld. AR, we restore the issue involved in Ground No. 2 to the file of the AO to decide the same afresh after taking into the consideration of the documents/submissions made by the assessee. Accordingly, the grounds No.2 the assessee is partly allowed for statistical purpose.

7. Ground No.3 regarding disallowance of carry forward loss to an amount of Rs.1,29,061/-. It is the case of the assessee that the CIT(A) failed to appreciate that the assessee had claimed loss in the current year to be carry forward an amount of Rs.1,29,061/- which has been erroneously disallowed by the AO. In view of the above facts and circumstances, we remand the issue involved in Ground No. 3 to the file of the A.O. for de-novo adjudication after considering the contention of the Assessee. Accordingly, the Ground No. 3 of the Assessee is partly allowed for statistical purpose.

8. Ground No. 4 is regarding tax refund of Rs. 28,050/-. The Ld. AR submitted that the assessee had claimed a tax refund of Rs.28,050/- which has been erroneously disallowed by the AO. Considering the above facts and circumstances, the issue involved in ground No. 4 is also restored to the file of the AO with a direction to verify the contention of the Assessee regarding tax refund and decide the same in accordance with law. Accordingly, the Ground No. 4 of the Assessee is partly allowed for statistical purpose

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open Court on 17th October, 2023.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 17/10/2023

Pk/R.N, Sr.ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI