

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.2862, 2863, 2864 & 2865/DEL/2022
Assessment Years 2018-19, 2018-19, 2019-20 & 2020-21

Sai Computers Ltd. Sai Dham, Victoria Park Meerut	Vs.	Assistant Director of Income Tax, CPC New Delhi
TAN/PAN: AACCS2787D		
(Appellant)		(Respondent)

Appellant by:	Ms. Monika Agarwal, Adv		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	10	10	2023
Date of pronouncement:	18	10	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

ITA No.2864/Del/2022 Assessment Year 2019-20

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi ('CIT(A)' in short) dated 04.11.2022 arising from the intimation orders dated 11.05.2020 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. As per the grounds of appeal, the assessee has challenged the disallowance of employees' contribution to PF/ESIC under Section 36(1)(va) r.w. Section 43B of the Act amounting to Rs.1,18,73,047/-

3. When the matter was called for hearing, the Id. counsel for the assessee at the outset pointed out that the judgment rendered by the

Hon'ble Supreme Court in *Checkmate Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC)* is on the first principles that timely payment under the respective Acts applies to the employees' contribution and the statute has treated employees and employers contribution differently after the insertion of Section 36(1)(va) in the statute. Thus, the crux of the judgment in *Checkmate (supra)* is that employees' contribution stands on a different footing than employer's contribution. However, the assessee is entitled to show that the employee's contribution to PF/ESIC has been timely deposited qua the due date of payment of salary under the respective statute. The ld. counsel pointed out that the Co-ordinate Bench of Tribunal in *Kanoi Papers & Industries Ltd. vs. CIT 75 TTJ 448 (Cal)* has examined the concept of due date implied in Section 36(1)(va) of the Income Tax Act as well as the respective Acts and observed that the due date should be reckoned from the end of the month during which the disbursement of salary was actually made for the purposes of determination of due date under the respective Acts for deposit of contribution to the PF/ESIC etc. The ld. counsel thus submitted that mere approval of liability towards payment of salary without actual disbursement would not fastened obligation for deposits of employees' contribution under the Labour Act *per se* as observed by the Co-ordinate Bench in *Kanoi Papers (supra)*. The ld. counsel fairly submitted that this aspect has not been examined by the Revenue Authorities and therefore, this aspect needs to be examined for the purposes of determination of default in timely depositing contribution qua the due date as understood in *Kanoi Papers* case.

4. We find merit in such alternative plea towards timely deposit of employees' contribution to PF/ESIC qua the due date prescribed under relevant legislations and regulations. Thus while the action of

the Revenue for making adjustments towards belated payment to employees' contribution is endorsed on first principles, the matter is restored back to the file of the designated Assessing Officer for the purposes of ascertaining whether there is any delay in deposit of such contributions qua the due date in the light of the *Kanoi Papers (supra)*. It shall be open to the assessee to place all factual matrix before the Assessing Officer and take all pleas for evaluation and determination of the issue by the Assessing Officer. The Assessing Officer shall examine this alternative aspect and pass a fresh order in accordance with law after giving proper opportunity to the assessee of being heard.

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

ITA No.2865/Del/2022 Assessment Year 2020-21

6. The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi ('CIT(A)' in short) dated 18.11.2022 arising from the intimation orders dated 12.09.2022 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2020-21.

7. As per the grounds of appeal, the assessee has challenged the disallowance of Rs.35,10,013/- under Section 36(1)(va) while framing the assessment under Section 143(3) of the Act.

8. The Id. counsel for the assessee has placed similar contentions as in ITA No.2864/Del/2022 in respect of Assessment Year 2019-20 (*supra*).

9. The observations in Assessment Year 2019-20 shall apply

mutatis mutandis. The order of the CIT(A) is thus set aside and the matter is restored back to the file of the Assessing Officer for fresh determination of the issue on similar lines as noted in ITA No.2864/Del/2022.

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

ITA No.2862/Del/2022 Assessment Year 2018-19

11. The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi ('CIT(A)' in short) dated 04.11.2022 arising from the intimation orders dated 12.01.2020 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

12. As per the grounds of appeal, the assessee has challenged;

- (i) disallowance of deduction of Rs.50,28,534/- under Section 80JJA of the Act while drawing intimation under Section 143(1) of the Act.
- (ii) disallowance of expenditure of Rs.98,90,814/- by invoking provision of Section 2(24)(x) r.w. Section 36(1)(va) of the Act.

12.1 The first issue concerns denial of deduction under Section 80JJA on the ground that the prescribed Form 10DA for the purposes of deduction under Section 80JJA has not accompanied the return of income.

13. The Id. counsel for the assessee submits at the outset that while the deduction under Section 80JJA is contingent upon

furnishing of Form 10DA, the requirement of furnishing such form 10DA is directory in nature and therefore, merely because Form 10DA was filed on 28.09.2019, i.e., belatedly after the filing of return of income on 24.09.2018, this by itself cannot be the ground for denial of deduction entitled to the assessee. For this proposition, the ld. counsel referred to the decision rendered by the Co-ordinate Bench in the case of *Jeans Knit (P.) Ltd. vs. DCIT, [2022] 138 taxmann.com 480 (Bangalore - Trib.)*. The ld. counsel pointed out that the Form 10DA was filed much prior to intimation drawn under Section 143(1) dated 12.01.2020 and therefore, while drawing intimation under Section 143(1), the relevant form was available to CPC to enable it to grant deduction. The CPC has wrongly denied the deduction merely for the reasons of delay in furnishing the prescribed form. The ld. counsel thereafter submits that intimation under Section 143(1) has been drawn without giving any opportunity required under Section 143(1a) r.w. proviso thereto and therefore also the adjustment is bad in law.

14. The ld. DR for the Revenue, on the other hand, submitted that the provisions of Rule 19AB is plain and clear which provides that report of the Accountant is required to be furnished by the assessee along with return of income under clause (c) of sub section (2) of Section 80JJA. Thus Form 10DA filed beyond the due date of filing of return of income gets invalidated by operation of law and cannot be taken into account. The ld. DR further submitted that original Tax Audit Report was filed on 11.08.2018 in which claim of deduction under Section 80JJA was not reflected. The Tax Audit Report was also revised by the assessee on 20.09.2019 to seek claim of deduction. This act is also not permissible. The ld. DR thus relied upon the conclusion drawn by the CIT(A).

15. We have heard the rival submissions on the issue.

16. In the instant case, the assessee has claimed deduction of Rs.50,28,541/- under Section 80JJA r.w. Rule 19AB and Rule 12 of the Income Tax Rules in question. As pointed out on behalf of the assessee, the claim of deduction was duly made in the original return of income but however same was not reported in the Tax Audit Report. On realizing mistake, the Tax Audit Report was revised and also Form 10DA required for claiming such deduction was also filed albeit after the filing of original return of income but before the date of intimation.

17. Under the circumstances, the assessee seeks to submit that once the substantial compliance has been made by filing the prescribed form albeit after the return of income, such belated filing of prescribed form is not fatal in the sense that the requirement of Rule 19AB and Rule 12(2) are not mandatory *per se* but are essentially directory in nature. We find that the Bangalore Bench in *Jeans Knit (supra)* has taken a view that filing of such prescribed form is directory requirement and hence would stand satisfied if the Accountant's report is furnished during the course of assessment.

18. In consonance with the view taken by the Co-ordinate Bench, the denial of deduction under Section 80JJA solely for reasons of belated filing of the prescribed form is not justified. Consequently, the action of the CIT(A) is set aside and the Assessing Officer is directed to grant relief by way of deduction as claimed. Ground No.1 is accordingly allowed.

19. As regards, the second issue towards allowability of deduction under Section 36(1)(va), we restore the issue back to the file of the Assessing Officer for fresh determination in accordance with law on

the similar lines as noted in ITA No.2864/Del/2022 (supra).

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

ITA No.2863/Del/2022 Assessment Year 2018-19

21. The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi ('CIT(A)' in short) dated 09.11.2022 arising from the intimation order dated 18.04.2021 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

22. As per the grounds of appeal, the assessee has challenged disallowance of deduction of Rs.50,28,534/- under Section 80JJA of the Act while framing assessment order under Section 143(3) of the Act.

23. The issue concerns denial of deduction under Section 80JJA on the ground that the prescribed Form 10DA for the purposes of deduction under Section 80JJA has not been accompanied the return of income.

24. Identical issue has been discussed in ITA No.2862/Del/2022. In the present appeal, the assessee has challenged the denial of deduction in the regular assessment proceedings under Section 143(3) of the Act. The deduction under Section 80JJA was initially denied while drawing the intimation under Section 143(1) which has been contested in ITA No.2862/Del/2022. In the present appeal, the denial of deduction is in the course of regular assessment. The factual position being identical, we hold that, on first principles, the denial of deduction under Section 80JJA in the regular assessment is

not justified for the reasons provided in the preceding paragraphs in sync with ITA No.2862/Del/2022.

25. It is contended on behalf of the Revenue vide its written submission that the Assessing Officer has also observed on merits that conditions of Section 80JJAA is not found to be fulfilled in the present case apart from the belated compliance of submission of prescribed form for claim of such deduction. The CIT(A) has adjudicated the issue on first principles that impugned claim under Section 80JJAA is not maintainable due to violation of furnishing of report of accountant in prescribed form along with return of income. The CIT(A) has not adjudicated the disallowance of deduction made by Assessing Officer on merits. The Revenue thus contends that notwithstanding the allowability of deduction under Section 80JJ despite belated filing of prescribed form canvassed on behalf of the assessee, the issue is required to be examined on merits as well. The assessee is required to demonstrate the compliance of prescribed conditions for eligibility of deduction under Section 80JJAA on merits to avail the benefits. The Assessing Officer in paragraph 12 of the assessment order has clearly observed that the assessee has failed to meet the requirements even on merits. The Revenue thus contends that the claim of the assessee is also required to be negated even on merits. In counter, the assessee in its written submission elaborates its case for eligibility of deduction on merits and contends that the requirement of Section 80JJAA has been duly fulfilled.

26. In the absence of any observation of the CIT(A) on merits and in the absence of complete facts, we are not in a position to express our opinion on merits of the eligibility of deduction under Section 80JJAA of the Act. On consideration of the counter submissions of

the Revenue and assessee on the eligibility of deduction on merits, we consider it expedient to restore the matter back to the file of the CIT(A). It shall be open to the assessee to demonstrate that the criteria for eligibility of deduction under Section 80JJAA has been duly met for the purpose of such claim. The CIT(A) shall adjudicate the issue of eligibility of deduction under 80JJAA on merits after giving proper opportunity to the assessee to demonstrate its case. In the light of the observations recorded above, the issue is thus set aside and restored to the file of the Assessing Officer for *denovo* adjudication in accordance with law.

27. In the result, the appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open Court on 18/10/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /10/2023
prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**