

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI G.S PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1494/Del/2023
Assessment Year: 2020-21

Abhipra Capital Ltd., G.F, 58-59, World Trade Centre, Barakhamba Lane, Connaught Place, Delhi 110001 PAN AABCA 1702 F	vs.	The DCIT, Circle-1(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri V. Rajkumar, Adv.
Revenue For :	Shri Kanv Bali Sr.DR

Date of Hearing :	12.10.2023
Date of Pronouncement :	19.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order Id. NFAC/CIT(A), New Delhi dated 23.02.2023 for A.Y. 2020-21.

2. The grounds raised by the assessee are as follows:-

- Ld. CIT (Appeal) is not justified in law and facts and circumstances of the case in confirming order of Assessing Officer without appreciating the facts of the case.*
- Ld. Assessing Officer is not justified in law and facts and circumstances of the case in making addition of Rs. 15,64,620/- on account of making payment of PF & ESI before filing return of income as prescribed in law.*
- Ld. Assessing Officer is not justified in law and facts and circumstances of the case in making disallowance of payment of ESI & PF before filing Return and duly been covered u/s 43B as decided by Hon'ble CIT.*
- Ld. Assessing Officer is not justified in law and facts and circumstances of the case in making disallowance based on amendment in the Finance Act, 2021 which amendment is in force in prospective and not in retrospective.*

5. *Ld. Assessing Officer is not justified in law and facts and circumstances of the case in not considering the cases decided in favour of assessee after amendment in Finance Act, 2021. One of the case is Hon'ble ITAT Hyderabad Bench in ITA No. 1952/Hyd/2018 dated 1st July, 2021.*

6. *Ld Assessing Officer is not justified in law and facts and circumstances of the case in not considering the cases decided in favour of assessee in case of M/s. Krishna Kanha Shelters Pvt. Ltd Vs. ACIT Circle 2(1)(2) (ITA No.53/Agr/2021 same issue was before ITAT Agra Bench and Hon'ble ITAT Bench Agra vide order dated 21st March, 2022 decided the case in favour of appellant.*

7. *Ld Assessing Officer is not justified in law and facts and circumstances of the case in not considering the cases decided in favour of assessee by Hon'ble ITAT Delhi Bench "G" in ITA Nol 1392/Del2021 Raj Kumar, 189 Sector 9A, Gurgaon Haryana PAN ANSK35554E vs. ITO CPC, Bengaluru, Karnataka.*

3. As per grounds of appeal, the assessee has challenged the disallowance of employees contribution to Provident Fund/ESIC u/s 36(i)(va) r.w.s. 43B of the Act. The ld. counsel submitted that Ld. Assessing Officer is not justified in law and facts and circumstances of the case in making addition of Rs. 15,64,620/- on account of making payment of employees contribution in PF & ESI before filing return of income as prescribed in law.

4. Ld. Sr.DR for the Revenue on its part, contended that Central Processing Centre ("CPC") has made additions of Rs. 15,64,620/- to the returned income of the assessee on account of late deposit of employees contribution to Provident Fund/ESIC while processing the return of income. In this regard, the action of the Revenue in making disallowance towards late deposit of employees' contribution to Provident Fund/ESIC was supported by the judgement rendered in the case of Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC). Ld. Sr. DR for the Revenue thus submitted that even for Assessment Years prior to Assessment Year 2021-22, belated employees' contribution are to be reckoned as taxable income of the assessee u/s 2(24)(x) of the Act and the deduction u/s 36(i)(va) of the Act would not be permissible thereon in case of belated payments. Ld. Sr.DR for the Revenue further contended that the delayed deposit of employees' contribution indicated in the Audit Report is sufficient for adjustment under section 143(1) of the Act, as held by the Pune Bench of the Tribunal

in the case of Cemetile Industries vs ITO TS-933-ITAT-2022 (Pune).

5. The issue towards taxability of belated employees' contribution to Provident Fund/ESIC is no longer *res integra* in the light of the judgement of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs CIT (supra). The coordinate Bench of the Tribunal in Cemetile Industries vs ITO (supra) had expressed a view that such adjustment/disallowance is also permissible in the proceedings carried out u/s 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in Savleen Kaur & Others vs ITO in ITA Nos. 2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023 has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-ordinate Benches, we do not see any merit in the appeal of the assessee. We thus, do not see any warrant to any reason to interfere with the order of Ld. CIT(A).

9. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 19.10.2023.

Sd/-
(G.S PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 19th October, 2023

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi