

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 1535/Mum/2023 (A.Y.2018-19)**

**InCred Management and Technology  
Services Pvt. Ltd.**

Unit No. 1203, 12<sup>th</sup> floor, B-Wing,  
The Capital, Plot No. C-70,  
G-Block, BKC, Mumbai-400 051

**PAN: AAGCB6271M**

..... Appellant

Vs.

**CIT (A)/NFAC**

Income Tax Department,  
Mumbai

..... Respondent

Appellant by : Shri Nitesh Dalmia, Ld. AR  
Respondent by : Shri H. M. Bhatt, Ld. CIT-DR

Date of hearing : 19/07/2023  
Date of pronouncement : 16/10/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 07.03.2023 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

*Ground No. 1: On the facts and in the circumstances of the case and in the law, the Commissioner of Income-tax (Appeals) ('CIT (A)') erred in determining the total loss of the Appellant at INR 34,54,487 as against INR 78,23,907 claimed by the Appellant in its return of income.*

*Ground No. 2: On the facts and circumstances of the case, the Ld. CIT (A) has erred in both law and in facts in confirming the addition of INR 25,05,773 as undisclosed income for AY 2018-19 disregarding the submissions filed by the Appellant.*

*Ground No. 3: On the facts and circumstances of the case, the Ld. CIT (A) has erred, both on law and facts, in confirming disallowance of INR 18,63,647 on account of delay in deposit of employee's contribution to PF and ESI disregarding the submission filed by the Appellant that the employee's contribution is deposited before filing of return of income,*

2. The brief facts of the case are that assessee company filed its return of income for the year under consideration on 30.10.2018 declaring current loss of Rs. (-) 78, 23,907/-. Case of the assessee was selected for scrutiny under CASS to verify the issues relating to Refund claim, Contract receipts or fees, Sales Turnover/receipts and Excess contribution to provident fund, superannuation fund or gratuity fund. The assessee company has submitted that it was engaged in the business of providing support services to its group companies named (1) Incred Financial Services Ltd. (formerly known as Visu Leasing & Finance Pvt. Ltd.), (ii) Incred Housing Finance Pvt. Ltd. (formerly known as Bee Secure & Finance Pvt. Ltd.), (ii) Essel Forex Ltd., (iv) Ebix Money World (formerly known as Centurion

Direct Ltd.); and has received service fee income for providing Corporate support services and company has also received fee income from marketing services.

3. During the assessment proceedings as per AO, there are certain anomalies in the ITR filed by the assessee. Which resulted in addition of Rs. 25, 05,773/- on account of undisclosed income, Rs. 18, 63, 647/- on account of late deposit of PF & ESI. Assessee being aggrieved with this addition preferred an appeal before the Ld. CIT (A), who in turn confirmed the additions made by the AO. Assessee being further aggrieved preferred this present appeal before us. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith ground raised.

4. Ground no. 1 is general in nature; hence no specific adjudication is required.

5. Ground no. 2 pertains to addition of Rs. 25, 05,773/- on account of difference between receipts considered by the assessee vis-à-vis amount shown in Form no. 26AS. On this issue, assessee prepared a reconciliation statement between books of accounts and Form no. 26AS which is reproduced as under:-

Particulars	Income (Rs.)	Amount of TDS (Rs.)
Gross receipts as shown in Note no. 14 & 15 of the financials	5,33,56,986	
Add: amount recovered from group companies netted off against expenses	37,46,72,383	
Total receipts (A)	42,80,29,369	
Amount as reflecting in form 26AS	41,86,43,944	3,85,33,368
Less: receipt of other group company wrongly appearing in the appellant's from 26AS	12,49,446	1,24,947

Less: incorrect entries /credits appearing in form 26As for which even TDS credit is not claimed	13,29,774	26,595
Add: Miscellaneous income not reflecting in 26AS but offered to tax as per books	73,425	
Net amount reflecting in Form 26AS (B)	41,61,38,149	
Difference (A-B)	1,18,91,220	
Add/Less		
Advance received from other group company in AY 2017-18 and offered to tax in AY 2018-10	1,18,91,219	11,89,131

6. This addition of Rs. 25, 05,773/- consists addition of Rs 12, 49,446/- and Rs. 13, 29,774/-. The addition of INR 12,49,446 pertains to the income of the group company i.e. InCred Prime Finance Limited, PAN AAACV2320 (earlier known as InCred Financial Services Limited). The deductors have inadvertently quoted the PAN of the Appellant as against PAN of InCred Prime. The Appellant has never received the amount of INR 12, 49,446 in its bank account. We have referred and observed paper book page no. 130 (Annexure 6) for the list of parties along with the amount totaling to INR 12,49,447/-, who have inadvertently reported the income and passed the withholding tax credit of INR 1,24,946, to the Appellant. Further, the above income of INR 12,49,446, has already been offered to tax by InCred Prime in Its tax ROI for AY 2018-19 [Paper book page no 131 to 134 (Annexure 7) for the relevant extract of the ROI of InCred Prime.

7. Accordingly, the Appellant has neither offered the above receipts of INR 12, 49,446 to tax in its ROI nor has taken corresponding credit of TDS of INR 1, 24,946 withheld by these parties in its ROI. We have verified page no. 132, 133 and 134 of paper book (Annexure 7) and found the submissions of the assessee as tenable.

The group concern M/s InCred Financial Services Limited declared this figure of Rs. 12,49,446/- in their profit and loss account and paid taxes also on this revenue, so the same cannot be added back to the income of the assessee as it will tantamount double taxation alongwith undue tax liability on the assessee.

8. The income of INR 13, 29,774/- appearing in Form 26AS represents incorrect credit of income in Form 26AS from ACG Inspection Systems (actual amount never received by the Appellant). The Appellant submits that the income of INR 13,29,774 does not pertain to it, and hence the same has neither been offered to tax nor the TDS credit (at the rate of 2%) pertaining to such receipt amounting to INR 26,595 is availed by the Appellant in its ROI. Also, detailed submissions were made by the Appellant vide its submissions dated 22 April 2021, before the Ld. AO outlining the above facts. Please refer paper book page no, 143 & 144 (Annexure 10) capturing reconciliation of receipts offered to tax as per books and Form 26AS.

9. On this issue, we find that assessee has not accounted for the income of Rs. 13, 29,774/- on the ground that there is no actual income accrue or arise to the assessee and there is some wrong income declared by one party M/s ACG Inspection Systems and consequently, this party deducted and deposited a TDS of Rs. 26,595/- assessee neither declared income nor claimed the amount of TDS mentioned (supra). We have gone through the orders of authorities below and paper book submitted by the assessee, but it is not clearly transpired that what exactly are the facts relevant to the matter. In our opinion on this matter, assessee needs to be re-appear before the jurisdictional AO with a certificate from M/s ACG Inspection Systems that it was an inadvertent mistake at their part

and assessee neither received nor entitled to receive this amount, hence not chargeable to tax in the hands of the assessee. Assessee is also directed to file appropriate bank statement alongwith affidavit confirming its contentions. **In the result, ground no. 2 is partly allowed for statistical purposes.**

10. Ground no. 3 pertains to to disallowance of employee's contribution to PF/ESI of Rs. 18, 63,647/-. It is observed that Ld. CIT(A) has confirmed the disallowance u/s. 36(1)(va) of the Act by relying on the decision of Hon'ble Apex Court in the case of Check Mate Services Pvt. Ltd. 143 taxmann.com 178 (2022). The operative portion of the order of Ld. CIT (A) is reproduced herein below:-

*8.1 This issue has been settled by Hon'ble Apex Court in the case of Check mate Services Pvt. Ltd. 143 taxmann.com 178 (2022) vide order dated 12.10.2022. In para 54 and 55 of this order he Hon'ble Apex Court has held as under: -*

*"54. In the opinion of this Court, the reasoning in the impugned judgment that the non- obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or*

*before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.*

*55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."*

*As this issue has now been settled by the Apex Court. Therefore, respectfully following this decision the disallowance made by AO is confirmed and the Ground of Appeal is 'Dismissed'.*

11. In view of above we don't find any force in the contentions of the assessee and there is no point to interfere in the order of Ld. CIT (A). As we have gone through the paper book dated 03.07.2023 in which assessee has submitted a part of its tax audit report containing schedule 20(b) i.e. details of contribution received from employees for various funds as referred to in section 36(1)(va). As per this schedule 20(b), In view of this, we hereby confirm the findings in the order of Ld. CIT (A) and ground no. 3 raised by the assessee is dismissed.

**12. In the result, Appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 16<sup>th</sup> day of October, 2023.

Sd/-

(KULDIP SINGH)  
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 16/10/2023

Sr. PS (Dhananjay)

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**