

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2776/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Circular Aircon Services Pvt. Ltd. 1, Mehta Industrial Estate, Jai Prakash Road No.2, Goregaon (E), Mumbai- 400063.	बनाम/ Vs.	ITO, Ward-12(1)(4) 1 st Floor, Income Tax Office, New Marine Line, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC6387P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Neha Paranjpe
Revenue by:	Shri Satya Prakash Singh (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 20/11/2023
घोषणा की तारीख /Date of Pronouncement: 29/11/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 09.06.2023 for the assessment year 2017-18.

2. The main grievance of the assessee is against the action of the Ld. CIT(A)/NFAC dismissing the appeal of the assessee *ex parte* and confirming the disallowance made by CPC u/s 36(1)(va) of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts are that the assessee filed its return of income showing gross total income of Rs.12,22,371/- which was processed by CPC u/s 143(1) of the Act, wherein the CPC was pleased to disallow Rs.8,58,062/- u/s 36(1)(va) of the Act and thus, computed the total



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income at Rs.20,80,433/-. According to assessee, it had already *suo-motto* disallowed Rs.8,58,062/- in its return [mistakenly u/s 43B of the Act], and not u/s 36(1)(v) of the Act. Therefore, CPC disallowed Rs.8,58,062/-. In order to rectify the mistake (*supra*), assessee preferred an application u/s 154 of the Act for rectification before the CPC, which was rejected by the CPC. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein it was again contended before the Ld. CIT(A) that the assessee had already disallowed Rs.8,58,062/- u/s 43B of the Act. (*which has been disallowed by the CPC u/s 36(1)(va) of the Act*) And therefore, the disallowance of the same amount would tantamount to double taxation. However, the Ld. CIT(A) dismissed the contention, because according to him, assessee failed to produce relevant documents. Aggrieved by the aforesaid action of the Ld. CIT(A)/NFAC, the assessee is before us.

4. We have heard both the parties and perused the records. In order to buttress her argument that assessee had *suo-motto* disallowed Rs.8,58,062/- in its original return, the Ld. AR drew our attention to page nos. 1 to 56 of the PB, wherein the copy of the original income tax return filed in Form no. 6 has been filed; and took us to page no. 17 point no. 11, wherein that column, assessee had to fill up the amount which has been debited in profit and loss account that is disallowable u/s 43B of the Act and especially to column underneath it i.e. clause (b) “*i.e. any sum payable by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the*



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welfare of employees”, wherein the assessee had *suo-motto* shown to have disallowed Rs.8,58,062/-. However, the CPC had again disallowed the same u/s 36(1)(va) of the Act to the tune of Rs.8,58,062/- because in Form 3CA, placed at page no. 57 to 67 of PB, the assessee had shown at page 60 details of contribution received from employees as refund to u/s 36(1)(va) of the Act to the tune of Rs 8,58,062/-, and therefore the CPC disallowed Rs.8,58,062/-. And despite assessee filing application u/s 154 of the Act, for rectifying this mistake, and had filed along with it the rectified return of income, the CPC didn’t rectify the same and Ld CIT(A) confirmed the action of CPC. Per contra, the Ld. DR opposing the submission of assessee pointed out from the return of income, that the assessee had shown at page no. 11, point no. 6 (k) [*any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date (36(1)(va) of the Act]*, as ‘zero’ and again at page no. 33 of PB, the assessee had shown the amount disallowable u/s 36(1)(va) of the Act as ‘zero’. The Ld. DR also drew our attention to page no. 60 of PB wherein the assessee has given the details of the contribution received from employees for various funds as referred to in section 36(1)(va) of the Act wherein the assessee has given the list of the employees contribution along with the details of sum received from employees/Due date for payment/the actual amount paid/actual date of payment to the concerned authority which CPC computed as



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disallowable u/s 36(1)(va) of the Act at Rs.8,58,062/-. Therefore, according to Ld. DR, the CPC has rightly disallowed Rs.8,58,062/-. Be that as it may, we note that the assessee had disallowed u/s 43B of the Act an amount of Rs.22,32,820/- in its computation filed along with the ITR-6. However, after receiving intimation from CPC u/s 143(1) of the Act, wherein assessee noticed the addition of Rs.8,58,062/- (which was *disallowance made u/s 36(1)(va) of the Act*), the assessee filed rectification application u/s 154 of the Act along with the computation of income wherein the assessee has shown that disallowance u/s 43B of the Act was only to the tune of Rs.13,74,758/- (and not Rs.22,32,820/-) and the balance portion i.e. Rs.8,58,062/- was the suo-motto disallowance made under section 36(1)(va) of the Act. The mistake happened (supra) because in the original ITR filed in Form no. 6, the assessee erroneously punched in the column meant for showing the amount which need to be disallowance u/s 43B of the Act, the amount of Rs.8,58,062/- which ought to be disallowed u/s 36(1)(va) of the Act. In other words, in the original ITR assessee wrongly included the amount of Rs.8,58,062/-, in the disallowance u/s 43B of the Act to the tune of Rs.22,32,820/-. However, the CPC was not able to appreciate the mistake and didn't bother to correct it. However, it is a trite law that the Income Tax Authorities should only collect the legitimate tax and should not impose tax based on mistake or misconception of an assessee. Thus, the authorities under the Act (Income Tax Act) are under an obligation to act in accordance to law and collect tax in accordance to the Act. Therefore, if the assessee had suo-



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motto disallowed Rs.8,58,062/- which was disallowable u/s 36(1)(va) of the Act *albeit* mistakenly u/s 43B of the Act, then, the authorities concerned has to examine this issue and take the right action or else it will tantamount to double taxation. In the light of the facts and circumstances discussed, and in the interest of justice for both the parties, we set aside the impugned order of the Ld. CIT(A) and restore this issue back to the file of the AO for the limited purpose of verification of the claim made by the assessee that it has already suo-motto disallowed Rs.8,58,062/- which was again disallowed by CPC u/s 143(1) of the Act as discussed supra. The assessee is directed to file relevant documents before AO to substantiate its claim and the AO to examine the claim of the assessee and redress the grievance/pass order in accordance to law.

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

Order pronounced in the open court on this 29/11/2023.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/11/2023.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai