

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.59/PUN/2023
निर्धारण वर्ष / Assessment Year : 2020-21

Salasar Warehousing Private Limited, F-2, Warehouse, Sr.No.20/2a, Near Mundhwa Bridge, Kharadi, Pune – 411014. PAN: AAMCS4834C	V s	The Income Tax Officer, Ward-6(1), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Sarvesh Kandelwal – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	27/09/2023
Date of pronouncement	30/11/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income tax (Appeal)(NFAC) passed under section 250 of the Income Tax Act, 1961 for A.Y. 2011-12 on 17/11/2022 emanating from order passed by ld.DCIT(CPC), Bangalore under section 143(1) of the Act. The assessee has raised following grounds of appeal:

“1. On facts and circumstances prevailing in the case and as per provisions and scheme of the Act it be held that the disallowance of Rs.32,87,860/- under section 43B, which includes GST payment of Rs.12,34,655/-, TDS payment of Rs.15,21,817/-, Employers contribution to PF of Rs.64,846/-, Employers contribution to ESI of Rs.16,045/-, Professional Tax of Rs.9,750/- and Bonus to employees of Rs.4,37,107/-, is not in accordance with the Act and the same be deleted. Just and proper relief be granted.

2. The appellant prays to be allowed to add, amend, modify, rectify, delete and raise any grounds of appeal at the time of hearing.”

Findings & Analysis :

2. We have heard both the parties and perused the records. It is observed that assessee had claimed following liabilities outstanding on 31.03.2020 :

<i>Sr.No.</i>	<i>Particulars</i>	<i>Amount Outstanding(Rs.)</i>
1	<i>GST payable</i>	<i>12,34,655/-</i>
2	<i>Taxes and duties : Tax Deducted at Source</i>	<i>15,21,817/-</i>
3	<i>Employer's contribution to PF</i>	<i>64,486/-</i>
4	<i>Employer's contribution to ESI</i>	<i>16,045/-</i>
5	<i>Taxes and duties: Professional Tax</i>	<i>9,750/-</i>
6.	<i>Bonus / Commission to employees</i>	<i>4,37,107/-</i>
	<i>Total</i>	<i>32,87,860/-</i>

2.1 But, allegedly claimed to be paid on or before date of filing return. The Centralized Processing Centre(CPC) in the order

under section 143(1) has disallowed these payments. The assessee filed appeal before the ld.CIT(A). However, it is observed that the ld.CIT(A) has discussed only one issue of Employee's Contribution to ESI and PF, somehow, ld.CIT(A) overlooked the other debits i.e.GST payable, professional tax etc., The relevant paragraph 4.2 of ld.CIT(A)'s order is reproduced here as under :

“4.20 In view of the above discussion, decisions of the various High Courts and Hon'ble Supreme n the case of M/s Checkmate Services P. Ltd. vs. CIT - I vide civil appeal no. 2833 of 2016 as discussed supra, the explanation and the intention of the legislature set out through the Memorandum to the Finance Act, 2021, it is evident that the employees contribution was never intended to be covered by Section 43B. Therefore, the addition made on account of delayed payment of employees contribution towards EPF/ESI amounting to Rs. 4,530/- and Rs.32,87,860/- on account of expenses disallowed u/s 43B by the AO are upheld. Thus the grounds No. 1 & 2 of the appellant are dismissed.”

2.2 Thus, it can be observed ld.CIT(A) erred in not adjudicating the other debits i.e. GST payable, Professional Tax etc., The ld.CIT(A) needs to adjudicate on each liability separately by passing the speaking order. However, the ld.CIT(A) has not done the same. The Hon'ble Bombay High Court in the case of Pr.CIT(Central) Vs. **Premkumar**

Arjundas Luthra (HUF) Bombay)/[2017] 297 CTR 614

(Bombay)has held as under :

Quote, “8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of

income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”
Unquote.

2.2 Thus, the Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution. However, in this case ld.CIT(A) has dismissed appeal of the assessee without adjudicating each disallowance.

3. However, we would like to make it clear as far as assessee’s payment of Employee’s Contribution to ESI and PF is concerned, the law is well settled now by the decision of the Hon’ble Supreme Court in Checkmate Services P. Ltd. &Ors. Vs. CIT &Ors. (2022) 448 ITR 518 (SC). Accordingly, the additions made on account of delayed payment in depositing Employee’s Contribution to ESI and PF has to be confirmed. However, this will be subject to verification of facts by the

ld.CIT(A) i.e. exact date of payment and then pass a speaking order. Therefore, if it is established therein delayed payment of Employee's Contribution to ESI and PF, then following decision of the Hon'ble Apex Court in Checkmate(supra) this addition would be confirmed.

As far as other issues are concerned, which are as under :

1	<i>GST payable</i>	12,34,655/-
2	<i>Taxes and duties : Tax Deducted at Source</i>	15,21,817/-
3	<i>Employer's contribution to PF</i>	64,486/-
4	<i>Employer's contribution to ESI</i>	16,045/-
5	<i>Taxes and duties: Professional Tax</i>	9,750/-
6.	<i>Bonus / Commission to employees</i>	4,37,107/-
	<i>Total</i>	32,87,860/-

Since ld.CIT(A) has not discussed, adjudicated these debits, we set-aside it to ld.CIT(A) for denovo adjudication.

4. Therefore, in the facts and circumstances of the case, we set-aside the order of the ld.CIT(A) and remand the matter to ld.CIT(A) for denovo adjudication after giving opportunity to the assessee. The assessee shall provide all the necessary document required by the ld.CIT(A). Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open Court on 30th November, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th Nov, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “बी”बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.