

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.806/Bang/2023
Assessment Year : 2020-21

Sri Elavarthy Ramana Reddy, 10, Behind Sandhya Tent, Venkateshwara Layout, Old Madiwala, Bengaluru-560 068. PAN - ABOPR 2085 B APPELLANT	Vs.	The Dy. Commissioner of Income-tax, Circle-4(3)(1), Bengaluru. RESPONDENT
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Revenue by	:	Dr. Nischal, Addl. CIT (DR)
Assessee by	:	Ms. Sunaina Bhatia, Advocate

Date of Hearing	:	12-12-2023
Date of Pronouncement	:	14-12-2023

ORDER
PER MADHUMITA ROY, JUDICIAL MEMBER

The appeal filed by the assessee is directed against the order dated 12/12/2023 passed by the NFAC arising out of the order dated 24/12/2021 passed by the CPC dated Circle-4(1)(1),

Bengaluru u/s 143(3) of the Act for the assessment year 2020-21.

2. The brief facts of the leading case is that the assessee is an individual carries on the business of management of municipal solid waste secured from BBMP. The assessee maintained books of account and also subjected to Audit u/s 44AV of the Act. It filed its return on income on 02/01/2021 declaring taxable income of Rs.49,40,760/-. Along with the return of income, the assessee had also filed the report of CA u/s 44AB and Form 3CB and 3CD on the same day. The SCIT made disallowance of Rs.7,58,970/- u/s 36(1)(va) of the Act based upon the disallowance in the tax audit report of the CA and From 3CD as the case made out by the revenue. The case of the assessee is that belated remittance of employees contribution to PF/ESI would also not to be taxable having regard to sec. 43B of the Act provided the same has been paid before the due date of filing of return u/s 139 of the Act. The aforesaid disallowance of Rs.758970/-, is therefore, not called for and the ld.counsel for the assessee, therefore prayed for remitting the matter to the file of ld.AO for fresh adjudication. We note that the details of the salary paid to the employees before due date and date of making payment of PF both in respect of and also in respect of ESI has been furnished before us by the assessee appearing at page No.8

of the paper book filed before us. The extract of the same is as follows:-

Salary for the month of	Salary paid on	PF Due Date	PF Date of Payment	Relief - PF to be allowed	ESI Due Date	ESI Date of Payment	Relief - ESI to be allowed
June	26/07/2019	15/08/2019	27/06/2019	1,73,130/-	15/08/2019	28/06/2019	25,029/-
July	16/08/2019	15/09/2019	15/07/2019	N.A.	15/09/2019	16/07/2019	10,852/-
August	17/09/2019	15/10/2019	19/09/2019	1,72,778/-	15/10/2019	19/09/2019	11,169/-
September	05/10/2019	15/11/2019	23/09/2019	1,70,610/-	15/11/2019	23/09/2019	10,889/-
October	07/11/2019	15/12/2019	25/10/2019	1,73,391/-	15/12/2019	01/11/2019	11,118/-
Total				6,89,909/-			69,057/-

3. The assessee's case is, thus, in view of the details given hereinabove, the disallowance is of Rs.6,89,909/- and relief is of Rs.69,057/- towards ESI is not warranted when it was to be considered from the date of actual remittance of salary. The same is therefore, liable to be deleted.

4. We do not find any serious objection to this effect from the Id.DR as against the contention made by the assessee before the authorities below and before us too.

5. Thus, having regard to the facts and circumstances of the case, we find merit in the submission and case made out by the assessee. In that view of the matter, we under the present facts and circumstances of the case find it fit and proper to remit the

issue to the file of the Id.AO to consider the details as provided by the assessee as summarized hereinabove and to pass speaking order in favour of the assessee after giving an opportunity of being heard to the assessee and to adduce evidence at the time of hearing the appeal before the Id.AO.

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

Order pronounced in the open court on 14th December, 2023

Sd/-
(CHANDRA POOJARI)
Accountant Member
Bangalore,
Dated, the 14th December, 2023.

Sd/-
(MADHUMITA ROY)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore