

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 1979/Mum/2021

(A.Y: 2018-19)

Shubh Arya Steel PvtLtd 61/2, Lakri Bunder, Darukhana, Mumbai-400010.	Vs.	ACIT.Circle4(3)(2), Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. : AAEC57868R		
Appellant	..	Respondent

Appellant by :	Shri C.V. Jain.AR
Respondent by :	Shri P.D. Chougule. Sr.DR

Date of Hearing	05.12.2023
Date of Pronouncement	06.12.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 143(1) and 250 of the Act. The sole ground of appeal challenged by the assessee is with respect to the disallowance of ESIC and PF of Rs.65,498/- which includes employers and employee contributions.

2. The brief facts of the case are that, the assessee is engaged in the business, The assessee has filed the return

of income for the A.Y 2018-19 on 14.09.2018 disclosing total income of Rs. 1,87,38,450/-. Subsequently the return of income was processed by disallowing the contribution towards PF and ESIC u/sec 36(i)(va) of the Act of Rs. 65,498/- and the disallowance u/sec 40A(3) of the Act of Rs.1,71,043/- and the total income was determined at Rs.1,90,61,630/- and the order u/sec 143(1) of the Act was passed dated 16.10.2019. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) and was dismissed. On further appeal, the Honble Tribunal has allowed the assessee appeal.

3. Subsequently, the Hon'ble Tribunal in Miscellaneous Application filed by the revenue in MA No.146/Mum/2023 order dated 11.10.2023 has recalled the Tribunal order dated 14.06.2022 for adjudication of Ground of appeal No.2 considering the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd Vs CIT (448 ITR 518(SC)) where in employers have to deposit employees contribution towards ESIC and PF on or before the due date as prescribed in the respective Act.

4. At the time of hearing, the Ld. AR submitted that the assessment was completed u/sec 143(1) of the Act with

disallowance of PF&ESIC contribution, earlier the Hon'ble Tribunal has allowed the assessee appeal and on MA of the revenue, the Tribunal order was recalled. The Ld.AR emphasized that there was never an opportunity to the assessee to submit the details of payments/deposits before the A.O. which includes disallowance of employer contribution also. The Ld.AR pleaded for one more opportunity before the lower authorities to substantiate with the material evidences. Per Contra, the Ld. DR supported the order of the CIT(A)..

5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is with respect to the disallowance of contributions of ESIC&PF by the AO u/s 143(1) of the Act. The disallowance also include the employers contributions, which is allowable U/sec43B of the Act and The Ld.AR prayed for one more opportunity of hearing before the lower authorities to explain the details along with the evidences. We find the return of income was processed under 143(1) of the Act and there was never an opportunity to the assessee to submit the details. Therefore, considering the facts and circumstances and to meet the ends of justice, we shall provide with one more opportunity of hearing to the

assessee to substantiate the claims before the assessing officer and for limited purpose, we restore the disputed issue to the file of the Assessing officer to examine and verify the claim and decide on the merits. And the assessee should be provided adequate opportunity of hearing and the assessee should cooperate in submitting the information and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 06.12.2023.

Sd/-  
(PADMAVATHY S)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 06.12.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार / BY ORDER,

*ITA No. 1979/Mum/2021  
Shubh Arya Steel Pvt Ltd, Mumbai.*

**- 5 -**

सत्यापित प्रति //True Copy//

( Asst. Registrar)  
ITAT, Mumbai