

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1600/DEL/2023
Assessment Year 2020-21

Ashok Kumar C/o The Tax Chambers Advocates & Legal Advisors C-177, Defence Colony, LGF, Delhi.	Vs.	ITO Ward-1(5) Gurgaon
TAN/PAN: BBOPK6740B		
(Appellant)		(Respondent)

Appellant by:	Ms. Swati Talwar, Adv.		
Respondent by:	Shri Kanav Bali, Sr.DR		
Date of hearing:	04	01	2024
Date of pronouncement:	10	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 24.03.2023 arising from the intimation order dated 28.10.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning AY 2020-21.

2. When the matter was called for hearing, the ld. counsel for the assessee submitted that although several grounds have been raised, the solitary dispute is confined to disallowance of Rs.17,83,170/- confirmed by the CIT(A) on the wrong premise that such amount represents late deposits of employees

contribution towards PF/ESI under Section 36(1)(va) as against the correct position that such amount represents employer's contribution rather than employees contribution. The Id. counsel submitted that compliance of Section 43B has been made and the payments were made before the due date of filing of return of income under Section 139(1). Delineating further, the Id. counsel further pointed out that the Central Processing Centre, Bengaluru (CPC) processed intimation under Section 143(1) dated 28.10.2021 and *inter alia* disallowed Rs.17,83,170/- claimed by the assessee towards employer's contribution to PF/ESI in tune with Section 43B of the Act wrongly assuming it to be employee contribution. However, on realizing the mistake, the CPC *suo motu* rectified the aforesaid intimation by passing order dated 15.06.2022 under Section 143(1) r.w. Section 154 of the Act wherein the mistake was taken cognizance and the wrongful disallowance made earlier towards the impugned employer's contribution was rectified and the correct position as claimed was restored. However, meanwhile the assessee preferred impugned appeal before the CIT(A) against the original intimation. The CIT(A) wrongfully confirmed the original intimation without taking cognizance of the rectification order passed under Section 154 which accepted the correct position that the amount of Rs.17,83,170/- represents employer's contribution and thus is governed by Section 43B of the Act and provisions of Section 36(1)(va) would not apply in respect of employer's contribution. The Id. counsel further pointed out that the aforesaid amount of Rs.17,83,170/- attributable to employer's contribution emanates from facts on record and therefore, the order of the CIT(A) requires to be set aside to restore the stance of the assessee and

assess correct income in accordance with law. On being inquired by the Bench, the Id. counsel fairly submitted that another dispute of Rs.72,093/- raised in the grounds of appeal relates to late deposit of PF/ESIC towards employee's contribution and thus Section 36(1)(va) would apply. Hence, assessee does not seek to press such grievance raised in the grounds.

3. The Id. DR for the Revenue did not offer any comment.
4. In the light of the submissions made on behalf of the assessee and having regard to the material available on record, we find palpable justification in the relief sought by the assessee. The denial of relief in respect of employer's contribution amounting to Rs.17,83,170/- by the CIT(A) on misconception of facts is thus reversed and the position adopted by the Assessing Officer in the rectification order passed under Section 154 is restored.
5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 10/01/2024

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

DATED: /01/2024

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**