

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.2969/Del/2022, A.Y.2018-19)

Neha Aviation Management Pvt. Ltd. C/o. M K Bhatt & Co. Chartered Accountants, G-7, Preet Vihar, New Delhi-110092 PAN-AACCN7234L (Appellant)	Vs.	Centralized Processing Centre, ACIT, Circle 18(1), Delhi (Respondent)
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Appellant by	Sh. M.K.Bhatt, CA & Sh. Malav Goswami, Adv.
Respondent by	Ms. Pooja Swaroop, Sr. DR

Date of Hearing	08/01/2024
Date of Pronouncement	10/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the assessee against the order of Ld. Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)", for short], dated 28/11/2022 for Assessment Year 2018-19. Grounds of the assessee are as under :

"1. The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by the Centralized Processing Center (CPC) Bengluru, while

processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 is completely bad in Law and wrong on facts. The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has only gone by surmises, conjuncture and guess work in drawing inference and in recording his conclusion. In the absence of any cogent material to support his findings, the same being based on conjuncture and surmises cannot be upheld.

2. *The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by the Centralized Processing Center (CPC) Bengaluru, while processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 is not “ justified in upholding the adjustment, based on certain inputs from the tax audit reports of the appellant in question. Addition by way of adjustment and intimation under section 143(1) of the Act on debatable and controversial issues is beyond the scope of Section 143(1).*

3. *The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by the Centralized Processing Center (CPC) Bengaluru, while processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 while confirming the addition of Rs. 35,41,750/- on account late deposit of the Provident Fund and ESI just by one day from the prescribed time limit under the respective acts i.e. dated 15-10-2017. The same was duly deposited on or before the date of filing the return of income on dated 29-09-2018 or due date of filing the return of income dated 30-09-2018, whichever is earlier, i.e. on dated 16- 10-2017.*

4. *The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by*

the Centralized Processing Center (CPC) Bengaluru, while processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 without appreciating a fact that the employer's contribution of Rs. 19,02,260/- and Administration charges of Rs. 1,21,264/- does not fall within the definition of Income under section 2(24) of the Act and are not governed by the provisions of Section 36(l)(va). Hence a disallowance of Rs. 20,23,524/- is incorrect and liable to be deleted.

5. The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by the Centralized Processing Center (CPC) Bengaluru, while processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 confirming the addition of Rs. 23,47,045/- on account of Bonus Payable ignoring the submission that it was a clerical mistake while filling the Form 3CD and has no nexus with the financial figures as appearing in the financial statement for the respective financial year.

6. The CIT (Appeals)/National Faceless Appeal Centre (NFAC) has erred in law and on fact, in confirming the order passed by the Centralized Processing Center (CPC) Bengaluru, while processing the return of the appellant under section 143(1) of the Act, vide its order dated 10-01-2020 the reduction of the amount of tax credit available on account of tax deducted at source (TDS) amounting to Rs. 68,56,267/- to Rs. 64,01,638/- ignoring the provisions of section 199 of the Act and without considering the reconciliation produced during the course of the appeal.

7. The appellant craves the consent to add, modified, amend or delete any of the ground of appeal at the time of hearing.

8. *All of the above grounds are without prejudice to each other.”*

2. The brief facts of the case as mentioned in the order of the Ld. CIT(A) are as under :

“1. The appellant is a company, duly incorporated as per the provisions of the Companies Act 1956/2013 (Hereinafter called as Appellant) and engaged in the business of providing Manpower on contractual basis, for providing Comprehensive Ground Handling Services, Cargo Handling Services, Loading/Unloading, Cargo Carting, Strapping, Wrapping, Housekeeping & Comprehensive Flight Cleaning Services (Exterior/Interior/Deep Cleaning) and .other allied services to Airlines across the Indian Airports since 2008.

2.The return of income for the assessment year 2018-2019 was electronically filed vide the e-filing acknowledgement number 313304991290918 on dated 29-09- 2018, along with the financial statements and auditor's report under section 44AB of the Income Tax Act, 1961, (Here in after called as Act) declaring the taxable income amounting to Rs. 58,77,830/-.

3. The auditors of the appellant had pointed out in their tax audit report instances of late deposit of PF/ESI dues in the Annexure "B" at point no. 20(b) of the form 3CD of the report, where it was duly reported that the said statutory dues were duly paid on or before the due date of filing the return of income or date of filing the return of income whichever is earlier. Yes, for the month of September 2017, there was a delay in payment there of as under:

EMPLOYEES STATE INSURANCE

Month	Employees	Date	of	Due date of	The actual
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	<i>Contribution</i>	<i>payment</i>	<i>payment</i>	<i>amount paid</i>
<i>September, 2017</i>	<i>8,33,532/-</i>	<i>16/Oct/2017</i>	<i>15/Oct/2017</i>	<i>8,33,532/-</i>

PROVIDENT FUND

<i>Month</i>	<i>Employees Contribution</i>	<i>Date of payment</i>	<i>Due date of payment</i>	<i>The actual amount paid</i>
<i>September, 2017</i>	<i>27,08,218/-</i>	<i>16/Oct/2017</i>	<i>15/Oct/2017</i>	<i>27,08,218/-</i>

4. In addition to the above fact, in the tax audit report, in the from 3CD at serial number 26 (i) (B) (b) it was wrongly written as under, due to inadvertent clerical mistake, beyond the actual fact that the said sum was not at all payable as per the financial record.

<i>Nature of Liability</i>	<i>Amount</i>	<i>Remarks if any</i>	<i>Section</i>
<i>Bonus Payable</i>	<i>23,47,045/-</i>		<i>Sec. 43B (c) sum referred to u/s 36(1)(iii)</i>

The Centralized Processing Center (Hereinafter called as CPC), Bengluru, processed the said return under section 143(1) of the Act, vide its order dated 10- 01-2020 and Document Identification No: CPC/1819/A6/1942902658, where in following adjustments were made:

a. Amounts debited to the profit and loss account, to the extent disallowable under section 36 (6r of Part A-OI) at Serial Number 14 at the Page number 15 amounting to Rs. 35,41,750/-.

b. Any amount debited to profit and loss account of the previous year but disallowable under section 43B (11g of Part A-OI) at Serial Number 18 at the Page number 15 amounting to Rs. 23,47,045/-.

6. The above adjustment resulted into the amount of total income equal to Rs. 1,17,66,626/- in place of the returned income of Rs. 58,77,830/- and further increase of the tax liability including the cess from Rs. 15,13,542/- to Rs. 32,42,001/-.

7. Further adjustment was made by the CPC in relation to the amount of tax credit availed by the appellant in its return of income on account of tax deducted at source (TDS) amounting to Rs. 68,56,267/- to Rs. 64,01,638/-.

8. Finally the amount of income tax refund Rs. 53,42,730/- claimed by the appellants - was reduced to Rs. 31,59,637/-without interest.”

3. As against the intimation letter dated 10.01.2020 passed under Section 143(1) of the Income Tax Act, 1961 ('Act' for short). The assessee preferred an appeal before the Ld. CIT(A). Ld. CIT(A) vide order dated 28.11.2022 dismissed the appeal. Aggrieved by the order of Ld. CIT(A) dated 28.11.2022, the assessee preferred the present appeal on the grounds mentioned above.

4. Ground No. 1 and 2 are general in nature and we find no merit in ground No. 1 and 2 of the assessee, accordingly, ground No. 1 and 2 are dismissed.

5. In Ground No. 3, the Assessee admitted that the assessee had deposited provident fund and ESI with one day delay prescribed in the respective Acts. Further submitted that the contribution has been deposited on or before the date of filing of the return of income thus sought for deletion of the disallowance.

6. The allowability of deposit of Employee's Provident Fund and ESI are no more *res integra*, the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs Commissioner of Income Tax held that the employee's contribution to PF and ESI if not remitted before the due date prescribed in the respective enactments, cannot be allowed as a deduction. By respectfully following the ratio laid down by the Hon'ble Supreme Court, we dismiss the ground No. 3 of the assessee.

7. In ground No. 4, the assessee contended that the Ld. CIT(A) and the CPC Bengaluru committed error in not considering that employer's contribution of Rs. 19,02,260/- and Administration charges of Rs. 1,21,264/- which does not fall within the definition of income u/s 2(24) of the Act and are not governed by the provisions of Section 36(1)(va) of the Act. Thus, submitted that the disallowance of Rs. 20,23,524/- is liable to be deleted.

8. Considering the above facts and circumstances, we deem it fit to remand the issue to the file of the Ld. CIT(A) to consider the issue involved in ground No. 4 afresh and direct the assessee to produce cogent evidence in support of the contention of the assessee that the disallowance made by the AO does not fall within the definition of income u/s 2(24) of the Act and not governed by the provisions of Section 36(1)(va) of the Act. Accordingly, the ground No. 4 is partly allowed for statistical purposes.

9. In ground No. 5, the assessee contended that the Authorities below have ignored the submissions made by the assessee and made addition of Rs. 23,47,045/- on account of bonus payable. The said addition is the resulted due to clerical mistake of the assessee while fill in the Form No. 3CD and has no nexus with the financial figures as appearing in the financial statement in the respective financial years. Therefore, submitted that the issue may be remanded to the file of Ld. CIT(A) for fresh consideration. The Ld. DR submitted that the assessee has not submitted any document in support of the claim, therefore, Ld. CIT(A) has rightly decided the issues against the assessee, thus sought for dismissal the said ground.

10. We have heard the parties and perusal the materials available on record. It is the contention of the assessee that the addition of Rs.

23,47,045/- made on account of bonus payable is due to the error committed by the assessee while filling the Form 3CD which has no nexus with the financial figures as appearing in the financial statement of respective financial year. The assessee has contended that he has produced the supporting evidences which has not been considered by the authorities.

11. Considering the above facts and circumstances, we deem it fit to remand the issues to the file of the Ld. CIT(A) with the direction to decide the issue afresh and the Assessee is at liberty to produce relevant documents in support of the claim. Accordingly, the ground No. 5 of the assessee is partly allowed for statistical purposes.

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

Order pronounced in open Court on 10th January, 2024

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated:10/01/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI