

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.670/Ahd/2023
Assessment Year: 2015-16**

Yudo Hot Runners India Pvt. Ltd., Flat No.A-402, Shrinand Nagar-II, Vejalpur, Ahmedabad - 380 051 [PAN – AAACY 1303 R] (Appellant)	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(1)(1), Ahmedabad. (Respondent)
Assessee by	Shri Suresh Gandhi, CA	
Revenue by	Ms. Saumya Pandey Jain, Sr. DR	
Date of Hearing	19.12.2023	
Date of Pronouncement	10.01.2024	

ORDER

This appeal is filed by the assessee against order dated 01.11.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2015-16.

2. The assessee has raised the following ground of appeal :-

“1. *The learned CIT(A) has erred in law and on facts in confirming the penalty of Rs.1,21,467/- under Section 271(1)(c) of the Act levied by the AO in respect of the addition for delayed payment of Employees’ contribution to PF/ESIC without proper appreciation and consideration of the facts of the case. Considering the facts and submissions filed and the legal decisions relied upon, the impugned penalty of Rs.1,21,467/- levied u/s.271(1)(c) of the Act is required to be deleted.*”

3. The assessee is a company engaged in the manufacture of Heaters and trading in Hot Runners Systems. The assessee filed its return of income for the Assessment Year 2015-16 on 31.10.2015 declaring total income of Rs.6,53,95,180/- and shown book profit of Rs.6,54,53,200/- under Section 115JB of the Income Tax Act, 1961. The Assessing Officer made disallowance under Section 40A(2)(b) of the Act amounting to Rs.68,36,426/- as well as addition

under Section 36(1)(va) read with Section 2(24)(x) of the Act towards late payment of Employees Provident Fund and ESI contribution amounting to Rs.3,74,382/-. Assessment Order was passed under Section 143(3) of the Act at total income of Rs.7,26,05,990/- on 24.11.2017 for the A.Y. 2015-16. At the time of passing the Assessment Order, penalty proceedings under Section 271(1)(c) of the Act was initiated separately for concealing the particulars of income. Show cause notice for penalty proceedings on the issue of delay in depositing of Employees' Provident Fund and ESIC was issued on 13.08.2021. In the meanwhile, the CIT(A) deleted the disallowance under Section 40A(2)(b) of the Act and confirmed the addition under Section 36(1)(va) read with Section 2(24)(x) of the Act. After taking cognisance of the assessee's submissions, the Assessing Officer levied penalty of Rs.1,21,467/- thereby stating that the assessee has evaded tax.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that at the time of assessment proceedings as well as during the penalty proceedings, the decision of Hon'ble Apex Court in case of Checkmate India Pvt. Ltd. vs. CIT (2022) 143 taxman.com 178 was not passed and though the jurisdictional High Court in some of the matters decided the issue against the assessee but since the issue was pending before the Hon'ble Supreme Court, the assessee has taken cognisance of other Hon'ble High Court's decision which was in favour of the assessee and, therefore, the issue was debatable at that stage, thus there was no concealment of income or furnishing of inaccurate particulars of income. Therefore, the Ld. AR submitted that the penalty under Section 271(10)(c) of the Act should not have been imposed.

6. The Ld. DR relied upon the Assessment Order, Penalty Order and the Order of the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. There is a delay of 246 days in filing the present appeal for which the

assessee has filed condonation of delay application thereby stating that the assessee was in knowledge of the order of CIT(A) dated 01.11.2022 only in the first week of August 2023 when the contingent liability in respect of the direct tax and indirect tax were verified for the purpose of audit of F.Y. 2022-23. The Ld. AR submitted that delay was not deliberate but due to mistake on the part of the assessee and his AR and, therefore, the delay should be condoned. The reasons given by the assessee elaborately suffice for delay in filing the present appeal. Hence the delay is condoned. As regards to penalty under Section 271(1)(c) of the Act, the invocation of the same is either that of filing inaccurate particulars of income or concealment of income or both the limbs are present in respect of assessee's return of income before the Assessing Officer. But, in the present case, the Hon'ble Supreme Court's decision in case of Checkmate came after the assessment proceedings as well as after the penalty proceedings. The issue was debatable at both the stages and in fact the assessee through his details of income has shown the dates upon which the contribution to PF & ESI was made. Thus, there was no concealment or furnishing of inaccurate particulars of income as those details were very much before the Assessing Officer as well as before the CIT(A). Therefore, there is no element of either furnishing inaccurate particulars or concealment of income. Since the issue was debatable, the assessee has taken the benefit of decision of other Hon'ble High Courts which were in favour of the assessee. Thus, Section 271(1)(c) of the Act does not attract in the present case. Appeal of the assessee is thus allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 10th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 10th January, 2024

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad