

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.1993/Del/2023  
(Assessment Year: 2019-20)**

Marca Coroma Bathtech Pvt. Ltd.,  
36<sup>th</sup> Mile Stone, Ganpati Industrial Area,  
Delhi Rohtak Road, Bahadur Garh,  
Jhajjar – 124 507 (Haryana).

vs. ITO, Ward 2,  
Rohtak.

**(PAN : AALCM7040A)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Jagjit Singh, CA  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 08.01.2024  
Date of Order : 11.01.2024

**ORDER**

This appeal by the assessee is directed against the order of Id. CIT(A)/  
National Faceless Appeal Centre (NFAC) dated 11.05.2023 for the  
Assessment Year 2019-20.

2. Grounds of appeal taken by the assessee read as under :-

“1. In view of the facts and circumstances of the case, the CIT(A) vide order u/s 250 of the Income Tax Act, 1961 DIN & Order No. ITBAINFAC/S/250/2023-24/1052770136(1) dated 11/05/2023 has erred in confirming the order passed by Mr. N Sairaj, Asst. Director of Income Tax, Centralized Processing Centre ("CPC") under Section 143(1) of the Income Tax Act, 1961 ("the Act") and the addition made therein is illegal, bad in law, without jurisdiction and void ab-initio. The addition made is erroneous, unjustified and illegal.

2. In view of the facts and in the circumstances of the case, the CIT(A) has erred in confirming addition/disallowance of Rs.12,16,628/- and assessed the total income of the Assessee at Rs.24,41,960/- as against the returned income of Rs.12,25,330.

3. In view of the facts and circumstances of the case, the CIT(A) has failed to consider that the addition has been made under Section 154/143(1) of the Act and is beyond the scope of the said section and as such the CPC had no power/authority/jurisdiction to make the said addition u/s 154/143(1) of the Act.

4. In view of the facts and circumstances of the case and in law, the CIT(A) has failed to appreciate that no disallowance is called for where employee's share of contribution is paid before the due date of filing the return under Section 139( I) of the Act. Therefore, the addition/disallowance amounting to Rs.12,16,628/- made on this account is illegal, bad in law and liable to be deleted.

5. In view of the facts and circumstances of the case CIT(A) has failed to consider that the CPC has erred in making addition/disallowance of Rs.12,16,628/- u/s 36(1)(va) of the Act on account of contributions received from employees for funds referred in Section 36(1)(va) of the Act.

6. That the CIT(A)/CPC has failed to appreciate that the Finance Act, 2021 amendment is prospective in nature and are applicable from A Y 2021-22 only and thus has no application to the facts under consideration for this A Y.

7. That the AO/CPC/CIT(A) has failed to provide any proper opportunity of being heard to the Assessee and the same is in violation of principle of natural justice and the impugned orders are liable to be set aside on this ground alone.

8. That the CIT(A)/CPC has failed to consider the material placed and available on record and has failed to judicially interpret the same as the same do not justify the addition/disallowance made.”

3. Brief facts of the case are that the assessee has filed its original return of income on 27.09.2019 for the year under consideration i.e. 2019-20

declaring total income of Rs.12,25,330/-. The AO passed the impugned intimation order u/s 143 (1) of the Income-tax Act, 1961 (for short 'the Act') dated 27.02.2020 wherein he disallowed a sum of Rs.12,16,628/- u/s 36(1)(va) of the Act on account of sum received from employees as contribution to any provident fund and any fund set up under ESI Act to the extent not credited to the account of the employees' accounts on or before the due date specified in the respective Acts.

4. Upon assessee's appeal, ld. CIT (A) confirmed the addition.

5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee contended that in the present case, disallowance under section 36(1)(va) of the Act has been mechanically done by lifting the dates from the tax audit report. He submitted that in fact, all the deposits have been made within the due date specified in the respective Acts. In this regard, he sought to submit additional evidences regarding the date of payment.

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below. However, he did not object to the admission of the additional evidences.

8. Upon careful consideration, we are of the opinion that the issue raised in this appeal along with additional documents need to be remitted to the file of AO. The AO shall consider the assessee's plea that the deposits have been made within the due dates specified in the Acts with reference to the additional material/evidences being filed by the assessee now. Needless to add, assessee should be granted adequate opportunity of being heard.

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

**Order pronounced in the open court on this 11<sup>th</sup> day of January, 2024.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 11<sup>th</sup> day of January, 2024**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**