

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 913/KOL/2023
Assessment Year: 2018-2019**

***Kamala Biri Manufacturing Co. Pvt. Ltd.,...Appellant
1, Rup Chand Roy Street,
Kolkata-700007
[PAN: AABCK2328R]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
CPC, Bengaluru/Circle-8(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Sanjib Kumar Das Sarma, Advocate, appeared on
behalf of the assessee*

*Shri Avijit Adhikari, JCIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 10, 2024

Date of pronouncing the order : January 11, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 03.07.2023 for A.Y. 2018-19.

2. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the disallowance of Rs.12,34,535/- on the ground that employees' contribution to EPF was not deposited by the assessee within due date provided under those Acts.

3. The ld. Counsel for the assessee submitted that the appeal of the assessee has been dismissed by the ld. CIT(Appeals) *ex parte* and the disallowance was made by the ld. Assessing Officer by way of a *prima facie* adjustment under section 143(1). Both the authorities have assumed payment of this contribution to the respective EPF Account in an erroneous manner. The auditor has reported the due date which is contrary to the factual situation. Therefore, unless all the facts are looked into by any of the authorities, the disallowance is not sustainable.

4. With the assistance of ld. Representatives, we have gone through the record carefully. The issue involved in the present appeal is whether the assessee has actually made the payment of employees' contribution in EPF Account within the due date available under the EPF Act or not. The finding of the Revenue authorities is based on an incorrect reporting of the auditor as alleged by the assessee. Therefore, we set aside both the orders and restore the issue to the file of ld. Assessing Officer. The ld. Assessing Officer shall verify the facts and thereafter re-adjudicate the issue.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 11/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 11th day of January, 2024

- Copies to :*(1) *Kamala Biri Manufacturing Co. Pvt. Ltd.,
1, Rup Chand Roy Street,
Kolkata-700007*
- (2) *Deputy Commissioner of Income Tax,
CPC, Bengaluru/Circle-8(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*
- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*
- (4) *CIT- , Kolkata;*
- (5) *The Departmental Representative*
- (6) *Guard File*
- TRUE COPY**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.