

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.105/Kol/2023
Assessment Year : 2019-20

Neptune Holidays Pvt. Ltd.....Appellant
3rd Floor, 113/F,
Maheshwartola Road,
Kolkata – 700046.
[PAN: AACCN9754F]

vs.

ITO, Ward-8(2), Kolkata..... Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Bonnine Debarma, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 22, 2024

Date of pronouncing the order : February 07, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 13.12.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1) For that on the facts and circumstances of the case, Ld. CIT (Appeals) was grossly erred in confirming the addition of Rs. 11,76,344/- made by A.O. at CPC on account of delay in deposit of employees contribution to P.F. and ESI while processing the return of income U/s 143(1) when in fact entire the sum was paid within the due dates specified under the relevant statues and wrong mention of dates in Tax Audit Report were duly brought to the notice of Ld. CIT (Appeals).

2) For that on the facts and circumstances of the case, the confirmation of addition of Rs.11,76,344/- invoking Sec 36(1) (va) by CIT (Appeals) is wrong in as much as there is no delay in deposit of employees contribution to P.F. and ESI and thus addition made is totally unwarranted and untenable in law.

3) For that on the facts and circumstances of the case, action of Ld. CIT (Appeals) was grossly erred in confirming the disallowance of deduction of Rs. 8,39,005/- claimed U/s 80 JJAA by the Ld. A.O. CPC as the return of income was filled beyond the due date.

4) We may add, alter, amend or with draw any grounds of appeal on or before the date of hearing.”

3. Ground Nos.1 & 2 – Ground Nos.1 & 2 relates to the disallowance made by the CPC/Assessing Officer u/s 36(1)(va) r.w.s. 2(24)(x) of the Act while processing the return u/s 143(1) of the Act in respect of delayed deposit of Employees’ Contribution to ESI & PF.

4. At the outset, the ld. Counsel for the assessee has submitted that in fact, there was no delay in depositing of Employees’ Contribution to ESI & PF. That there was a mistake/inadvertent error on the part of the accountant in mentioning the dates of the deposit resulting into the aforesaid disallowance. That, in fact the Employees’ Contribution to ESI & PF was made within the due date as prescribed under the relevant statutes. The ld. Counsel has submitted that this fact was brought to the knowledge of the CIT(A), however, the ld. CIT(A) did not consider the above submissions.

5. In view of the above submissions of the ld. Counsel, the matter is restored on the issue to the file of the Assessing Officer to verify the contention of the assessee and if the Employees’ Contribution to ESI & PF is found deposited within the due date as prescribed under the relevant statutes, then no disallowance be made in that respect.

6. Ground No.3 – Vide Ground No.3, the assessee has agitated that the CPC/Assessing Officer while processing the return u/s 143(1) of the

Act has made a disallowance of deduction of Rs.8,39,005/- claimed u/s 80JJAA of the Act.

7. The ld. Counsel in this respect has submitted that the assessment year under consideration being A.Y 2019-20 and at the relevant time, there was no provision for making such disallowance u/s 143(1) of the Act. He in this respect has relied upon the decision of the Coordinate bench of the Tribunal in the case of Sujatha Pugazendhi vs. ACIT reported in 2023 (4) TMI 288, wherein, the Coordinate bench of the Tribunal on the identical issue has made the following observations:

“9. The next issue that came up for our consideration from grounds of appeal filed by the assessee is disallowance of deduction claimed u/s. 80JJAA of the Act. The ld. Counsel for the assessee, submitted that deduction u/s. 80JJAA of the Act cannot be disallowed just because the return is filed beyond the due date of filing return of income u/s. 139(1) of the Act, because as per sub clause (v), deduction claimed under Chapter VI-A(C) can be adjusted while processing return of income u/s. 143(1)(a) of the Act from assessment year 2021- 22 onwards.

10. The Ld. DR, on the other hand submitted that from the assessment year 2018-19 onwards, any deduction is admissible under any provisions of Chapter VI-A under the head 'C- deduction in respect of certain income' and can be allowed only if return of income is filed on or before due date prescribed u/s. 139(1) of the Act. Since, the assessee has filed return of income beyond due date prescribed u/s. 139(1) of the Act, the AO has rightly disallowed said claim and their order should be upheld.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee has filed return of income beyond due date prescribed u/s. 139(1) of the Act. As per provisions of section 80AC of the Act, if return of income is not filed on or before due date prescribed u/s. 139(1) of the Act, then deduction provided under Chapter VI A-C cannot be allowed. But if you go by provisions of section 143(1)(a) of the Act, sub clause (v) has been amended by the Finance Act, 2021 w.e.f. 01.04.2021 and inserted Chapter VI-A deduction for the purpose of making adjustments while computing income u/s. 143(1)(a) of the Act. From the above, it is very clear that up to assessment year 2020-21, there is no provisions u/s. 143(1)(a) of the Act to make any adjustments towards Chapter VI-A deductions while processing return of income u/s. 143(1)(a) of the Act.

Therefore, we are of the considered view that even if assessee does not file return of income on or before due date prescribed u/s. 139(1) of the Act, then no adjustment can be made towards Chapter VI-A deductions under the head C- deductions in respect of certain income. Since, deduction u/s. 80JJAA comes under Chapter VI-A under the head C, in our considered view, while processing return of income for the assessment year 2018-19, the AO cannot make any adjustments while processing return of income u/s. 143(1)(a) of the Act. Therefore, we are of the considered view that the AO is erred in making additions towards deduction claimed u/s. 80JJAA of the Act, while processing return of income u/s. 143(1)(a) of the Act, and thus, we direct the AO to delete additions made towards deduction claimed u/s. 80JJAA of the Act.

8. Respectfully following the above decision of the Tribunal, the addition made by the CPC/Assessing Officer while processing the return u/s 143(1) of the Act in respect of deduction claimed u/s 80JJAA of the Act is ordered to be deleted.

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

Kolkata, the 7th February, 2024.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 07.02.2024.

RS

Copy of the order forwarded to:

1. Neptune Holidays Pvt. Ltd
2. ITO, Ward-8(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches