

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
डॉ मनीष बोरड, लेखक सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
[Before Dr. Manish Borad, Accountant Member & Shri Anikesh Banerjee, Judicial Member]

I.T.A. No. 1089/Kol/2023
Assessment Year: 2014-15

Kamarhatty Company Ltd. (PAN: AABCK 2916 K)	Vs.	DCIT, Circle-1(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	31.01.2024
Date of Pronouncement/ आदेश उद्घोषण की तिथि	.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manish Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Shri Kiran Chatrapoty, JCIT, Sr. D.R

ORDER / आदेश

Per Manish Borad, Accountant Member:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 05.07.2023 for the AY 2014-15.

2. The assessee has taken the following grounds:

1. (a) *That on the facts and in the circumstances of the case, the Ld. CIT(A)-NFAC erred in confirming the disallowance of contribution to PF and ESI amounting to Rs. 2,20,73,508/- when most of payments were well within the due date as per PF/ ESI Act.*
 - (b) *That on the facts and in the circumstances of the case, the Ld. CIT(A)-NFAC erred in confirming the addition on account of delay payment of employee's contribution to PF and ESI when the due date of making payment from 15 days from the close of the month is to be reckoned from the date of payment of salary / wages to employees and not from the date when the salary / wages become due to the employees.*
 - (c) *That on the facts and in the circumstances of the case, the Ld. CIT(A)-NFAC erred in confirming the action of AO who invoked the provisions of section 43B read with section 2(24)(x) and 36(1)(va) of the IT Act 1961 for alleged delay in depositing employee's contribution to Provident Fund and ESI of Rs. 2,20,73,508/-.*
2. *That the appellant craves the leave to make any addition, alteration, modification of the grounds either before the start or in the course of appellate proceedings.*
3. At the outset, the Ld. Counsel for the assessee submitted that the details of employer and employees contribution towards PF & ESI appearing in the audit report contains apparent mistakes with regard to date of payment and also at some places employer contribution has been mentioned as employees contribution. He also stated that such mistakes are only in few months. Prayer made that issue may please be restored to the file of Ld. AO for examining it

afresh after considering the details which will be filed along with proof of payment of the employees contribution towards PF & ESI.

4. On the other hand, the Ld. D.R vehemently argued supporting the order of lower authorities.

5. We have heard the rival contentions and perused the record placed before us. In the instant appeal of the assessee is against the disallowance of contribution towards PF & ESI amounting to Rs. 2,20,73,508/- on account of delay of payment beyond the prescribed under the relevant PF & ESI Act. We find that subsequent to the judgment of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT in [2022] 143 taxmann.com 178 (SC), the issue no more *res-integra* that if the employees contribution to PF & ESI is not deposited within the due dates prescribed u/s 36(1)(va) of the Act i.e. the due date under the relevant Welfare Legislation then such sum should be treated as income in the hands of employer u/s 2(24)(x) of the Act. Before us, the Id. Counsel for the assessee referring to the auditors certificate dated 5.9.2023 and 22.09.2023 as well as other document appearing in the Paper Book has claimed that there were certain mistakes in the Tax Audit report and more specifically in the details filed at serial no. 20(b) of the Form 3CD. Such mistakes are of two types: i) during some months date of payment as per the bank statement is prior to the payment date mentioned in the tax audit report. For instance for April,

2013 sum of Rs. 1890759/- which the assessee has claimed to have been paid on 17.05.2023 (duly supported by the bank statement), the payment date as per tax audit report is 21.05.2013. Similarly there are other instances of such mistakes of actual date of payment. It is claimed before us that if the actual date of payment as per the bank statement are considered major part of the disallowance would be deleted. Further it is also brought to our notice that for some months the employer contribution has been considered as employees contribution in the tax audit report.

6. Considering these facts, we find merit in the contention of the Ld. Counsel for the assessee and deem it fit to restore the issue of calculation of actual amount of disallowance u/s 36(1)(va) read with Section 2(24)(x) of the Act for delay in payment of employees contribution towards PF & ESI to the file of Ld. AO. We further direct the assessee to file all the relevant details including revised auditors certificate, bank statement, copy of PF & ESI challan and ledger account of employer and employees contribution before the AO so that the correct amount of disallowance u/s 36(1)(va) read with Section 2(24)(x) can be worked out. Needless to mention that appropriate opportunity of hearing should be provided to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 9th February, 2024

Sd/-
(Anikesh Banerjee/ अनिकेश बनर्जी)
Judicial Member/ न्यायिक सदस्य

Sd/-
(Dr. Manish Borad/डॉ मनीष बोरड)
Accountant Member/ लेखक सदस्य

Dated: 9th February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kamarhatty Company Ltd., 16A, Brabourne Road, Tea Board, Dalhousie, Kolkata-700001
2. Respondent – DCIT, Circle-1(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata