

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA No.66/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2019-20)

Neerus Ensembles (P) Ltd Hyderabad PAN:AACCN1554D (Appellant)	Vs.	Dy. C. I. T. Circle 16(1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P. Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	28/02/2024	
घोषणा की तारीख/Pronouncement:	29/02/2024	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 22/11/2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2019-20.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of retail in garments and other accessories. Assessee filed its return of income for the A.Y 2019-20 on 21.10.2019 declaring total income of Rs.6,95,37,230/-. The CPC sent an intimation u/s 143(1) of the Act by determining total income of the assessee at Rs.7,14,16,250/- wherein disallowance

of Rs.18,79,022/- was made on account of delayed payment of employee's contribution to PF & ESI and disallowance of Rs.27,25,000/- u/s 37 of the Act.

3. The assessee filed appeal before the CIT (A) NFAC who dismissed the appeal filed by the assessee.

4. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

1.	The order of the Ld. CIT(A) is erroneous both on facts and in law to the extent it is prejudicial to the interest of the appellant.
2.	The Ld.CIT(A) ought to have appreciated that the CPC has erred in issuing order under section 143(1) of the Act dated 05-05-2020 by disallowing Rs. 18,79,022/- towards the PF and ESI payments under section 36(1)(va) of the Act without appreciating the fact that it is settled law the due date being the due date for filing of return of income as specified in Income tax Act.
3.	The Ld.CIT(A) ought to have appreciated that the CPC erred in disallowing an amount of Rs. 18,79,022/- towards the payments of Provident funds and ESI which were duly paid by the assessee company before the due date for filing the return of income under section 139 of the Act and it is allowable under section 36(1) (va) of the Act.
4.	The Ld.CIT(A) ought to have appreciated that the CPC erred in treating as inconsistent an amount of Rs. 27,25,000/- u/s 37 of the Act.
5.	The Ld.CIT(A) ought to have appreciated that the CPC ought to have appreciated the fact it was purely arithmetical mistake by writing in the total column of 7(a) to 7(j) at 28,41,847/- while it should have been written as Rs.1,16,847/- and it can be clearly understood from the fact of the amounts as written individually in column 7 (a) to 7 (j).
6.	The Ld.CIT(A) erred in directing that any error made by the appellant should have been rectified by way of filing revised return within the prescribed time and erred in holding that the appellant is however free to approach the AO u/s 154 of the IT Act.
7.	The Ld.CIT(A) ought to have appreciated that the CPC ought to have appreciated the fact that the amount claimed u/s 37 of the Act is incurred wholly for the purpose of business.
8.	The appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

5. Grounds 1 & 8 being general in nature are dismissed.
6. So far as grounds of appeal No. 2 & 3 are concerned, the same relate to the disallowance of Rs.18,79,022/- by the CPC u/s 36(1)(va) which has been confirmed by the learned CIT (A) NFAC.
7. The learned Counsel for the assessee filed a copy of the audit report and drew the attention of the Bench to clause 20(b) and submitted that the assessee has paid some of the statutory dues on or before the due dates as prescribed under the PF & ESI Acts and therefore, suitable direction should be given to the Assessing Officer to give necessary relief after due verification. In absence of any objection from the side of the learned DR, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate with evidence to his satisfaction that the amount of Rs.18,79,022/- has been paid on or before the due date prescribed under the relevant Act and decide the issue as per fact and law. While doing so, the Assessing Officer is directed to keep in mind the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. Vs. CIT reported in (2022) 143 taxmann.com 178 (S.C)/448 ITR 518 dated 12.10.2022. The grounds raised by the assessee are accordingly allowed for statistical purposes.
8. Grounds of appeal No. 4 & 5 relate to the order of the learned CIT (A) NFAC in confirming the disallowance of Rs.27,25,000/- u/s 37 of the I.T. Act.

9. The learned Counsel for the assessee at the outset drew the attention of the Bench to the computation of total income and submitted that the assessee has already suo moto disallowed an amount of Rs.28,41,847/- which includes the amount of Rs.27,25,000/-. Therefore, the addition of the same by the CPC and confirmed by the learned CIT (A) NFAC amounts to double addition. Considering the totality of the facts of the case and considering the fact that an amount of Rs.28,41,847/- has been suo moto disallowed by the assessee in the computation of total income, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the same and decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds 4 & 5 raised by the assessee are accordingly allowed for statistical purposes.

10. Grounds 6 & 7 were not pressed by the learned Counsel for the assessee therefore, the above two grounds are dismissed as not pressed.

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

Order pronounced in the Open Court on 29th February, 2024

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 29th February, 2024

Vinodan/sps

Copy to:

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2	Dy.CIT Circle 16(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order