

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.05 /Viz/2024
(निर्धारण वर्ष / Assessment Year : 2019-20)**

TBR Infra (P) Ltd.
D.No.7-130/2
NH-16, Alampuram
West Godavari Dist.

[PAN : AAFCT6445E]

(अपीलार्थी/ Appellant)

Vs. Dy.Commissioner of
Income Tax
Circle-1
Rajahmundry

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Dr.Aparna Villuri, DR

सुनवाई की तारीख / Date of Hearing

: 27.02.2024

घोषणा की तारीख/Date of Pronouncement

: 28.02.2024

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], Delhi in DIN & Order No.ITBA/NFAC/S/250/2023-24/1054359987(1) dated 14.07.2023 for the Assessment Year (A.Y.) 2019-20 with the delay of 112 days. The assessee filed a petition for condonation of delay, submitting that Sri T.Karthik, who joined as accountant in the assessee company on 12.02.2021 and handled all financial, tax related matters, left the company on 25.07.2023. Sri T.Karthik handed over the charge to the new accountant, but he failed to

inform him about the order passed by the Ld.CIT(A) on 14.07.2023, which came to the notice of the assessee company only on receipt of phone call from Assessing Officer (AO) on 27.12.2023 for payment of outstanding demand. Without any further delay, the assessee took necessary steps and filed appeal against the order of the Ld.CIT(A) before the Tribunal on 02.01.2024 with the delay of 112 days. The assessee submitted that the delay in filing the appeal is neither intentional nor deliberate and hence pleaded to condone the delay and admit the appeal for hearing.

2. We have gone through the condonation petition filed by the assessee. In the instant case, the order of the Ld.CIT(A) was passed on 14.07.2023 and the appeal against the order of the Ld.CIT(A) ought to have been filed before the Tribunal on or before 12.09.2023. But the assessee could file the appeal on 02.01.2024 with the delay of 112 days. We find, there is a reasonable cause for filing the appeal belatedly. Hence, we condone the delay and admit the appeal for hearing.

3. Brief facts of the case are that the assessee filed its return of income on 31.10.2019, declaring an income of Rs.1,78,89,400/-. The return was processed u/s 143(1) of the Act by the Centralized Processing Center (CPC)/Assessing Office(AO), computing the total income at Rs.2,27,45,940/-, thereby making an upward adjustment of Rs.48,56,506/-

on the basis of Auditor's Report in Form 3CD, wherein delay in deposit of employee's contribution to PF and ESI was reported.

4. Aggrieved by the intimation passed u/s 143(1) of the Act by the CPC/AO, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A) upheld the order of the AO and dismissed the appeal of the assessee on this ground.

5. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) ought to have held that the adjustment of Rs.48,56,506/- made towards disallowance of delayed remittance of Employees' contribution to PF and ESI is outside the scope of intimation u/s 143(1) of the Act.

3. Any other grounds may be urged at the time of hearing.

6. The only contention of the Ld.AR is that the CPC/AO erred in disallowing the sum received from employees towards PF and ESI of Rs.48,56,506/- for the reason that the same was remitted belatedly beyond the due date prescribed by the PF Act and ESI Act. The Ld.AR contended that though the same could not be paid within the due dates specified under relevant Acts, the same were remitted before the due date of filing the return of income u/s 139(1) of the Act. The Ld.AR further contended

that the amendments made by Finance Act, 2021 to S.36(1)(va) and S.43B are applicable w.e.f. 01.04.2021 and do not apply for the year under consideration. He, therefore, pleaded to set aside the order passed by the Ld.CIT(A) and allow the appeal of the assessee.

7. Per contra, the Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal of the assessee.

8. We have heard both the parties and perused the material available on record. Now the law is settled on this issue after a view had been taken by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., in Civil Appeal No.2833 of 2016, order dated 12.10.2022. In the case on hand also, the assessee made remittances before filing the return of income u/s 139(1) of the Act, but not within the due date specified by the respective PF / ESI Acts. For the sake of clarity and convenience, relevant part of the order of the Checkmate Services Pvt. Ltd.(supra) is extracted as under :

"They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income is treated as a deduction. Thus, it is an essential condition for deduction that such amounts are deposited on or before the due date."

Since the decision of the Hon'ble Supreme Court pronounced the correct legal position of the allowability of belated payment of PF and ESI

under the provisions of the Act, we have no hesitation to come to a conclusion that the disallowance made by the AO as well as the Ld.CIT(A) needs no interference, in view of the decision of the Hon'ble Supreme Court mentioned supra.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28th February,2024.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 28.02.2024

L.Rama, SPS

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- TBR Infra (P) Ltd., D.No.7-130/2, NH-16, Alampuram, West Godavari Dist.
2. राजस्व/The Revenue -The Dy.Commissioner of Income Tax, Circle-1, Aayakar Bhavan Annexe, Veerabhadrapuram, Kambala Cheruvu, Rajamahendravaram
3. The Principal Commissioner of Income Tax, Rajahmundry
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam