

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 451/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2021-22)

OSI Systems Private Limited, Hyderabad [PAN No. AAACO4438M]	Vs.	Asst. Commissioner of Income Tax. Circle-5(1), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Ravi Bharadwaj, AR
राजस्व द्वारा / Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख / Date of hearing: 18/03/2024
घोषणा की तारीख / Pronouncement on: 22/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 20/07/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of OSI Systems Private Limited ("the assessee") for the assessment year 2021-22, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of software development services. For the assessment year 2021-22, it has filed the return of income on 14/03/2022 declaring total income of Rs.20,69,27,011/-. The return of income of the company was processed u/s 143(1) on 26/07/2022 by CPC making an addition of Rs.1,53,53,364/-, which includes insofar as this appeal is concerned, the disallowance of deduction claimed towards employees contribution towards PF and ESI and also adding refund of input tax credit paid in excess of tax liability under GST.

3. Assessee filed appeal before the learned CIT(A) and pleaded that on receipt on intimation under section 143(1) of the Act, the assessee raised objections, stating that the payments of PF and ESI have been made before the due date specified under the respective Act and there was only mistake in typing the date of payments of ESI/PF in form No. 3CD i.e. tax audit report, due to typographical error. In respect of the input tax credit of GST, assessee submitted that no claim on account of the same have been claimed as an expense in earlier years. Learned CIT(A), however, applied the law laid down in the case of Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC) on the premise that the contribution towards PF and ESI was remitted beyond the due date mentioned in section 37(1)(va) of the Act, insofar as that issue is concerned, and brushed aside the contention of the assessee on the input tax credit of GST stating that the valuation of the purchase/sale of goods and services and sale of inventory shall be adjusted to include the amount of duty, cess or fee actually paid or incurred by the assessee.

He accordingly, dismissed the claim of the assessee vide his order on 20/07/2023.

4. Aggrieved by the impugned order, assessee filed this appeal challenging these two issues relating to the addition of Rs. 12,98,362/- on account of employees' contribution to ESI/PF vide Ground No. 4 and the addition of Rs.1,29,92,500/- on account GST refund vide Ground No. 5.

5. With regard to Grounds No. 4, the learned AR submitted that the CPC under section 143(1) of the Act added Rs.12,89,797/- on account of employees' contribution towards PF and Rs. 8,565/- on account of employees' contribution towards ESI, total amounting to Rs. 12,98,362/- alleging that the same has not been deposited within the due date as specified under the respective Acts. The assessee submitted before the CPC that both the payments of PF and ESI have been made before the due date specified under the respective Act and there was only mistake in typing the date of payments of ESI/PF in form No. 3CD i.e. tax audit report, due to typographical error. CPC, however, without considering the submission of the assessee the made the addition of Rs. 12,98,362/-. It is further contended that the same facts were submitted before the learned CIT(A) along with the evidence of payments of PF/ESI. But, the learned CIT(A) dismissed the claim of the assessee, relying on the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd (supra).

6. Per contra, learned DR placed heavy reliance on the orders of the Revenue authorities and requested to uphold the order of learned CIT(A).

7. We have gone through the record in the light of the submissions made on either side. The decision of the Hon'ble Supreme Court in the

case of Checkmate Services P. Ltd., (supra) is applicable to the cases where payments of employees' contribution towards PF and ESI are not deposited within the due date as specified in the respective Act. Here in this case, the contention of the assessee is that the assessee made the payments within due dates, but there was a typographical mistake in mentioning the date as 12/08/2021 instead of 12/08/2020 in case of ESI and as 05/12/2000 instead of 05/12/2020 in case of PF. Though the assessee had taken this objection while giving response to the 143(1) intimation, the said fact was lost sight of even by the learned CIT(A) also. From a perusal of the facts emanating on this aspect from the paper book, we find that there was a typographical mistake in this regard as pleaded by the assessee.

8. However, since this is a verifiable fact, we are of the view that verification of this fact will obviate the things and, therefore, we restore the issue to the file of the learned CIT(A) and if it is found that if the payments of PF/ESI amounting to Rs.12,98,362/- have been made within the due date specified in the respective Act the learned CIT(A) will grant the relief, after affording the opportunity of hearing to the assessee. Grounds No. 4 of the appeal is answered accordingly.

9. With regard to Ground No. 5 the learned AR contended that the GST refund of Rs. 1,29,92,500/- is on account of the accumulated balance of the GST input credit lying as the current assets under the assets side of the balance sheet and it is towards release of such current assets only. He also submitted that no claim on account of the same has been claimed as an expense in earlier years. He further contended that the learned CIT(A)

without considering the facts of the case, dismissed the appeal of the assessee.

10. Per contra, learned DR placed heavy reliance on the orders of the Revenue authorities and requested to uphold the order of learned CIT(A).

11. We have gone through the record in the light of the submissions made on either side. The claim of the assessee that the GST refund was never debited to the P&L Account and at the same time, it does not answer the description of the trade receivables, needs verification of the books of accounts and relevant documents. The assessee is also ready to produce all such documentary evidence in support of his contentions and get the matter disposed of on merits. Accordingly, we restore the issue to the file of the learned CIT(A) to decide the issue on merits after affording the opportunity of hearing to the assessee. Grounds No. 5 of the appeal is answered accordingly.

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

Order pronounced in the open court on this the 22nd day of March, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 22/03/2024

TNMM

Copy forwarded to:

1. OSI Systems Private Limited, 4th Floor, Orion Block, The VIT Park, Plot No. 17, Software Units Layout, Madhapur, Hyderabad.
2. ACIT, Circle-5(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD