

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1041/Bang/2023</b>
<b>Assessment Year : 2017-18</b>

<p>M/s. Bulk Liquid Solutions Pvt. Ltd., Regd. Office: No. 31, Nadekerappa Ind. Estate Andrahalli Main Road, Hobli – Yeshwantpur, Bangalore – 560 091. <b>PAN: AACCB5632N</b></p>	<b>Vs.</b>	<p>The Deputy Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.</p>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Rajagopal, CA
Revenue by	:	Dr. Nischal, Addl. CIT (DR)

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	22-03-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 17.10.2023 passed by the NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

*“1. The impugned order passed by the learned Commissioner of Income Tax (Appeals) under section 250 of the Income Tax Act, 1961 to the extent which is against the Appellant is opposed to law, without jurisdiction, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The intimation of the learned assessing officer in so far it is prejudicial to the interest of the appellant is bad, erroneous in law, addition made is excessive and contrary to the facts and circumstances of the case and the Ld. Commissioner (Appeals) erred in upholding the same.*

*3. The learned Assessing Officer has erred, in law and in facts, by disallowing the employees contribution to provident fund and employees state insurance amounting to Rs. 11,90,092/-and the Ld. Commissioner(Appeals) erred in upholding the same.*

*4. The learned Assessing Officer has erred, in law and in facts, by not considering the provisions of Section 30 and Section 32 of the Employees' Provident Fund Scheme, 1952 wherein it is provided that the remittance of employees' contribution and employer's contribution to provident fund is to be paid by the employer in the capacity of employer and the Ld. Commissioner(Appeals) erred in upholding the same.*

*5. The learned Assessing Officer has erred, in law and in facts, by applying section 36(1)(va) instead of Section 43B of the Income Tax Act, 1961.*

*6. The learned Assessing Officer has erred, in law and in facts, by not considering and passing an intimation/ order contrary to the decision of Hon'ble Supreme Court and the Ld. Commissioner(Appeals) erred in upholding the same.*

*7. The Ld. Commissioner (Appeals) is erred in sustaining the addition made by the Ld. AO in his order by taking recourse to the amendment by way of insertion of Explanation 2 to section 36(1)(va) and Explanation 5 to the section 43B which takes effect from 1st April 2021 and is applicable to the AY 2021-22 onwards and hence not applicable to the current AY 2017-18, such amendment was substantive in nature and not formed part of statute*

*books of the current FY 2016-17, application of law retrospectively is bad in law and the Ld. Commissioner(Appeals) erred in upholding the same.*

*8. The interest demand made u/s 234B and 234C is excessive and the details of the computation of the same was not provided to the Appellant.*

*9. The Appellant submits that each of the above grounds are mutually exclusive and without prejudice to one another.*

*10. The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of objection at any time before or at the time of hearing before the Honourable Income Tax Appellate Tribunal ('Tribunal'), so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law. For these and other grounds that may be urged at the time of hearing of appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity."*

2. The assessee is carrying on the business of manufacture and sale of Flexi Tanks and Flexible Intermediate Bulk Containers (FIBC) bags filed return of income on 31.10.2017 for A.Y. 2017-18. An intimation u/s. 143(1) was made on 11.04.2022 wherein addition of Rs.60,02,310/- was made in the hands of the assessee. Against the intimation, the assessee had filed a rectification application u/s. 154 of the act. The Ld.AO vide order dated 03.06.2020 did not grant any relief and confirmed the addition as the payments made towards PF and ESI were beyond the period fixed under the respective Acts.

2.1 The assessee preferred appeal against the intimation passed u/s. 143(1) before the Ld.CIT(A) on merits. The Ld.CIT(A) vide order dated 17.10.2023 passed an order stating that the

intimation u/s. 143(1) merged into the order u/s. 154 of the act and disposed of the appeal by deleting the addition made towards gratuity and granted credit for self assessment tax. However, the addition made u/s. 36(1)(va) towards ESI/PF was sustained.

- 2.2 Assessee is in appeal against this order of the Ld.CIT(A) before this *Tribunal*.
3. We have perused the submissions advanced by both sides in the light of records placed before us.
4. We note that the Ld.AR has argued that assessee has remitted most of the contributions towards ESI/PF within the due date which is evident from form 3CEB coln. 20(b). It is the submission of the assessee that no disallowance is called for as the payment whether there is an alleged delay in depositing funds to ESI and PF account, the salary for those months have been paid in the subsequent month and therefore the due date has to be reckoned from the actual date of payment of salary.
5. The Ld.AR had also referred to sections 30 and 32 of Employees Provident Fund Scheme, 1952 to support its contention.
6. We have perused the form 3CEB wherein in coln. 20, the due date for payment and the actual date of payment to the concerned authority has been recorded. A careful perusal of

the same reveals that the certain payments have been made belatedly either with a short delay or with a delay of 2 to 3 months. In our considered opinion, the plea taken by the assessee regarding the delayed deposits by shifting the payment of salary to the subsequent month does not support the facts.

7. Section 38 of Employees Provident Fund Scheme, 1952 requires the deposit to be made within 15 days from the date on which the salary becomes due to the employees. Merely because the assessee has shifted the salary to the next month will not exonerate the assessee from the liability to deposit the employees' share to the ESI/PF funds as per the requirement under relevant Statute. In our considered opinion, after the ratio laid down by *Hon'ble Supreme Court* in case of *CHECKMATE SERVICES PVT LTD VS CIT-1 (supra)*, any such arguments raised by assessee before this *Tribunal* cannot be accepted / entertained. The decisions relied by the Ld.AR also will not provide any assistance to the present facts of the case as the ratio of *Hon'ble Supreme Court* is against the assessee on this issue. At this juncture, we also note that the Ld.CIT(A) rightly observed the merger of 143(1) with order u/s. 154. The present appeal filed by the assessee is against the intimation u/s. 143(1). Ideally the assessee should have filed appeal before the Ld.CIT(A) against 154 order. Accordingly, we direct the Ld.AO to verify the details filed by the assessee and to restrict the disallowance only in respect of such payments which have been deposited by the assessee to the

relevant statute beyond the due date of every month as per the ratio laid down by *Hon'ble Supreme Court*.

**Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 22<sup>nd</sup> March, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 22<sup>nd</sup> March, 2024.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore