

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4125/MUM/2023
(Assessment Year: 2018-19)**

Vinit Pravin Shetty,
51/52, Rustomjee Central Park,
Andheri Kurla Road,
Andheri (East), Mumbai - 400059
[PAN: CEVPS1331B]

..... **Appellant**

Income Tax Officer,
Kautaliya Bhavan,
Bandra Kurla Complex,
Bandra (East), Mumbai

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Ravikant Pathak
For the Respondent/Department : Ms. Rajeshwari Menon

Date

Conclusion of hearing : 16.04.2024
Pronouncement of order : 24.04.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 15/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) dismissed the appeal of the Assessee against the Assessment Order, dated 30/01/2021, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following concise grounds of appeal:
"1. (a) The Hon'ble Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre [hereinafter referred to as Hon'ble CIT(A)] erred in confirming the action of the AO in making the disallowance of Rs. 26,44,216/- being Employee's contribution to Provident Fund u/s 36(1)(va) of the Act due to inadvertent mistake in Tax Audit Report u/s 44AB of the Act.

2. *The Hon'ble CIT(A) erred in confirming the action of AO in making the disallowance of Rs. 2,08,638/- being liability on account of Service Tax u/s 43B of the Act.*
3. *The Appellant submits that he has paid service tax of Rs. 2,08,638/- before the due date of filing the return of income; hence the disallowance made by the AO shall be deleted."*

3. We have heard both the sides and perused the material on record.

4. The relevant facts as emanating from the record are that the Appellant filed return of income for the Assessment Year 2018-19 declared 'Nil' income on 23/10/2018. The aforesaid return was processed and intimation, dated 02/10/2019, was issued under Section 143(1) of the Act whereby income of the Appellant was assessed at INR 37,73,355/- after making the following adjustment:

SNo.	Head of Disallowance	Amount (INR)
1	Out of Provident Fund & ESIC (Employers and Employees share)	35,16,700/-
2	Service tax	2,08,638/-
3	VAT Payable	24,302/-
4	Unpaid ESIC	21,931/-
5	Unpaid EDLI (Employee's Deposit Linked Insurance)	1,794/-
	Total	37,73,355/-

5. Meanwhile, before the issuance of intimation under Section 143(1) of the Act, notices under Section 143(2) of the Act was issued to the Appellant on 22/09/2019. Subsequently, assessment was completed accepting the returned income

filed by the Appellant vide Assessment Order, dated 30/01/2021, passed under Section 143(3A) and 143(3B) of the Act. However, while computing the tax liability the business income under the head 'Profits and Gains of the Business or Profession' was taken as per the intimation issued under Section 143(1) of the Act. As a result the business income was computed at INR 46,92,025/- after making aggregate the addition of INR 37,73,355/- to the profits and gains of INR 9,18,670/- disclosed by the Appellant. This resulted in addition of INR 37,73,355/- even though in the assessment order the returned income was accepted.

6. Being aggrieved, the Appellant preferred appeal before CIT(A) contending that despite the fact the return income of the Appellant was accepted while making tax calculation sheet, business income of INR 46,92,025/- was taken as against return of business income of INR 9,18,670/-. The CIT(A), vide order dated 15/09/2023, dismissed the appeal by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Private Ltd. Vs. Commissioner of Income Tax: [2022] 448 ITR 518 (SC)[12/10/2022] moving on the presumption that entire amount of addition pertained to employees contribution towards provident fund and employees' state insurance deposited after due date of filing return of income.
7. Being aggrieved, vide order dated 15/09/2023, passed by the CIT(A) dismissing the appeal, the Appellant has preferred the present appeal. Vide Letter, dated 15/04/2024, the Appellant filed concise grounds of appeal which are reproduced in paragraph 2 above.
8. When the appeal was taken up for hearing, the Ld. Authorised

Representative advanced arguments on concise grounds of appeal filed on 15/04/2024. The Ld. Authorized Representative for the Appellant submitted that the returned income was accepted by the Assessing Officer, therefore, the addition made by the Assessing Officer could not be sustained. It was further submitted that the aggregate addition made by the Assessing Officer while computing the tax sheet consisted of different payments/expenses whereas the CIT(A) proceeded on the understanding that entire disallowance pertain to Employees' Contribution to Provident Fund/Employees State Insurance. Taking us through the relevant extract of Form 3CD (*placed at page 3 of the paper-book filed by the Appellant on 15/04/2024*), the Ld. Authorised Representative for the Appellant submitted that the declaration made in Clause 20(b) of the tax audit report in Form 3CD has been incorrectly understood while making disallowance/addition. It was submitted that for the month of May 2017 total of INR 1,33,649/-, consisting of employee's contribution of INR 63,764/-, employers Contribution INR 66,430/- and the administrative Cost of INR 434/-, was paid in subsequent months in four installments. However, the Tax Auditor in his form 3CD has reported INR 1,33,649/- four times in the column 'Sum Received From Employees' against each installment. Further, while processing the return it has been taken that only INR 1,33,649/- out of INR 5,34,596/- (INR 1,33,649 x 4) has been paid/deposited leading to disallowance of balance of INR 4,00,947/-. Similar mistakes have been made by the Tax Auditor for the month of June, July, August, September, October, November, and December, 2017.

9. Per contra, the Ld. Departmental Representative relied upon the order passed by the CIT(A).

10. We have considered the rival submissions and perused the material on record. We find that the Assessing Officer had completed the assessment under Section 143(3) of the Act vide Assessment Order dated 30/01/2021 accepting the return income of the Appellant. However, while computing the quantum of tax liability the business income as calculated in the intimation issued under Section 143(1) of the Act has been adopted. On going through Form 3CD placed at page 3 of the paper-book, we find that there are multiple entries of the same amount received from employees towards contribution of Provident Fund for the month of June, July, August, September, October, November and December of 2017. It is the contention of the Appellant that amount received from the employee was deposited in four different installments. However, the tax auditor has committed a mistake in mentioning the entire amount four times in Form 3CD against each installment paid. In our view, the aforesaid contention of the Appellant requires consideration. We find that the CIT(A) has not examined the break-up of aggregate amount of INR 37,73,355/- added to the business of income of INR 9,18,670/- disclosed by the Appellant in the return of income. On perusal of the assessment order, it cannot be said that this issue was examined by the Assessing Officer. Accordingly, in the facts and circumstances of the present case, we deem it appropriate to remand the issue raised in the present appeal relating to disallowance of Contribution to Provident Fund & Employee State Insurance, and Service Tax back to the file of Assessing Officer for denovo adjudication with the directions to the Assessing Officer to consider the nature of the aforesaid payments/expenses. The Appellant is directed to furnish all details/documents to support his case before the Assessing Officer including a reconciliation highlighting the alleged

mistake committed by the Tax Auditor in Clause 20(b) of Form 3CD. In terms of the aforesaid, Ground No. 1, 2 & 3 of the concise grounds of appeal raised by the Appellant before the Tribunal are allowed for statistical purposes.

11. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 24.04.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.04.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai