

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT
MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.475/Bang/2024
Assessment Year : 2017-18

M/s Methods India Pvt. Ltd., #5A, KIADB Industrial Area, Hosakote-562 114.	Vs.	The Dy. Commissioner of Income Tax, Circle-4[1][2], Bengaluru.
PAN – AABCM 8680 N		
APPELLANT		RESPONDENT

Assessee by	:	Shri Narendra Sharma, Advocate
Revenue by	:	Shri Subramanian S, Addl. CIT(DR)

Date of hearing	:	02.05.2024
Date of Pronouncement	:	17.05.2024

O R D E R

Per Laxmi Prasad Sahu, Accountant Member :-

This is an appeal filed by the assessee against the order passed by the CIT(A), Gurugram dated 06/03/2024 in DIN No. ITBA/APL/S/250/2023-24/1062112187(1) for the assessment year 2017-18 with the following grounds of appeal:-

"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned Addl/Joint Commissioner of Income tax [Appeals] is not justified in disposing off the appeal based on the submissions made earlier without allowing sufficient and real opportunity to the appellant to represent the case in response to notice issued for which the appellant had sought adjournment under the facts and in the circumstances of the appellant's case.

3. The learned Commissioner of Income tax [Appeals] / National Faceless Appeal Centre [NFAC for short] is not justified in upholding the determination of total income of appellant in the order L/s.154 of the Act, at Rs.2,92,19,713/- as against the returned income of Rs.1,95,22,440/- and thereby making an addition of Rs. 28,53,771/- u/s.36[l][va] of the Act, allegedly based upon the disallowance

indicated in the Tax Audit Report of the Chartered Accountant in Form 3CD, under the facts and in the circumstances of the appellants case.

4. The learned CIT[A]/NFAC ought to have appreciated that there was no disallowance u/s 36[1][va] of the Act indicated in the Tax Audit Report as mere details of the payments made were set-out and therefore, the impugned addition made u/s. 154 of the Act is outside the scope of the adjustments capable of being made u/s 143[1][a][iv] of the Act and therefore, the same deserves to be deleted.

5. The learned CIT[A]/NFAC failed to appreciate that the due date for making payment of the employee's contribution, would fall in the month following the actual disbursal of the salary and the due date as per the Provident fund act/ESI Act, was not the 20th day, of each calendar month as indicated in the audit report and therefore, the addition made was misconceived, under the facts and in the circumstances of the case.

6. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG the appellant denies himself liable to be charged to interest u/s 234A. 234B and 234C of the Act, as computed in the intimation u/s.143[1]/154 of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

7. For the above and other grounds that may be urged at the time of hear-of the appeal, your appellant humbly prays that the appeal may be allowed a Justice rendered and the appellant

may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. The brief facts of the case are that the assessee filed return on income on 13/10/2018 u/s 139(1) of the Act declaring income of Rs.1,95,22,441/- and it was processed u/s 143(1) on 18/01/2019 assessing income at Rs.2,92,19,710/- and raised demand of Rs.41,22,020/- while processing the return the Central Processing Center (CPC) disallowed the expenditure claimed towards employees contribution to PF/ESI.

3. The assessee filed rectification petition on 08/02/2019 assessing the income at Rs.2,23,76,212/- but the disallowance made u/s 36(1)(v)(a) of the Act for delay in remittance of ESI, as noted by the CPC as per tax audit report rectification was not accepted and accordingly, dismissed the rectification application.

4. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) also dismissed the appeal of the assessee.

5. Aggrieved, the assessee filed appeal before the Tribunal.

6. The ld. AR reiterated the submissions made before the lower authorities. The ld. AR submitted that the issue involved in the appeal is covered by the decision of coordinate bench of in the case of M/s Bulk Liquid Solutions Pvt. Ltd., in ITA No.01/Bang/2024 for the assessment year 2020-21 vide order dated 27/03/2024, wherein, the co-ordinate Bench followed the case of M/s. MTR Maiya's in ITA No.95/Bang/2023 dated 02.05.2023. The ld AR submitted that assessee's case is similar to that of the above decision of the co-ordinate bench cited supra.

8. The ld. DR relied on the orders of the authorities below & submitted that the Hon,ble Apex Court has settled the issue in favour of the revenue in case of Checkmate Service (P) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022. He also relied on the judgment of the co-ordinate bench of ITAT Bangalore in the case of Sri Panati Vinaykumar vs DCIT in ITA NO. 68/Bang/2024 order dated 27.03.2024 & M/s Bulk Liquid Solutions Pvt. Ltd., in ITA No.01/Bang/2024 for the assessment year 2020-21 order dated 27/03/2024.

9. Considering the rival submissions, we note that the CPC has disallowed for delayed deposit of PF/ESI on the basis of audit report submitted by the assessee during the course of processing the return. The 154 application filed by the assessee is also rejected. The CIT(A) relying on the judgment of Apex Court in the case of Checkmate Services P. Ltd. noted supra dismissed the appeal of the assessee by observing that the issue is settled in favour of revenue. We further note from the submission made by the Id. AR of assessee that case law cited by both the sides in the case of Bulk Liquid Solution P. Ltd. are similar to the facts of the assessee. Accordingly considering the totality of facts of the case, we deem it fit to send back the issue to the AO for fresh consideration in the light of the M/s Bulk Liquid Solutions Pvt. Ltd., in ITA No.01/Bang/2024 for the assessment year 2020-21 order dated 27/03/2024 and decision as per law, after giving opportunity of hearing to the assessee. The assessee is directed to produce all the documents required and not to seek unnecessary adjournment for early disposal of the case.

10. Ground No.6 is consequential in nature.

11. In the result, this issue is partly allowed for statistical purpose.

Order pronounced in court on 17th day of May, 2024

Sd/-

Sd/-

(KESHAV DUBEY)

(LAXMI PRASAD SAHU)

Judicial Member

Accountant Member

Bangalore,

Dated, 17th May, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore