

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1619/Chny/2023
निर्धारण वर्ष/Assessment Year: 2022-23

M/s.Macmillan Education- India Pvt. Ltd., No.21, Patullos Road, Chennai-600 002.	v.	The Dy. Commissioner – of Income Tax, Corporate Circle-4(1), Chennai.
[PAN: AAFCM 5564 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri S.P.Chidambaram, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	07.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	17.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals)-12, (hereinafter 'the Ld.CIT(A)'), Chennai, dated 03.11.2023 for the Assessment Year (hereinafter 'AY') 2022-23.



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2. At the outset, Ld.AR of the assessee submitted that there are two issues in this appeal preferred by the assessee. The first issue is regarding disallowance of Rs.18,22,155/- made by the CPC due to delay in payment of employee's contribution to ESI/PF; and secondly, disallowance of deposit of Labour Welfare Fund contribution amounting to Rs.7,309/-, despite, assessee *suo-moto* having disallowed it which tantamount to double taxation.

3. Regarding the first issue of disallowance of employee's contribution to ESI/PF, the assessee pointed out that the CPC has disallowed the same only because of erroneous recording of "*due date*" shown in the Tax Audit Report (hereinafter 'TAR'), even though, assessee had in fact remitted the employee's contribution well before the "due date" prescribed by the respective statutes (PF/ESI Act). For buttressing his contention, the Ld.AR drew our attention to Page No.12 of the order of the Ld.CIT(A), wherein, we note, *inter alia*, that employees contribution for PF for the month of July, 2021 was 15th August, 2021, however, the auditor of assessee in the TAR/Form No.3CD had shown the same wrongly as 15th July, 2021; and therefore, even though, the assessee had deposited employees contribution towards PF well before the due date, as per the requirement of relevant statute i.e. 15th August, 2021 (actual payment



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made by assessee on 11.08.2021), the CPC had disallowed the same due to inadvertent mistake reflected in Form No.3CD/TAR. We note from perusal of the chart showing the payment/deposit of PF/ESI, the assessee had deposited the employee's contribution well before the actual date as prescribed in the relevant statute (PF/ESI Act); and the whole confusion was due to inadvertent error which crept in to the incorrect wrong dates reported in Form No.3CD/TAR. For convenience, the chart shows the date of actual payment of employees' contribution of ESI/PF and the due-date as per PF/ESI Act, which fact has been taken note by the Ld.CIT(A) at Page No.12 of his order and which is reproduced as under:

Sl. No.	Type of Welfare Fund	Month	Actual date as per relevant statute	Incorrect due date reported in Form 3CD	Actual date of payment	Employee contribution
1	Provident Fund	July-2021	15-Aug-2021	15-Jul-2021	11-Aug-2021	18,13,700
2	ESI	May-2021	15-Jun-2021	15-May-2021	14-Jun-2021	187
3	ESI	June-2021	15-Jul-2021	15-Jun-2021	12-Jul-2021	152
4	ESI	July-2021	15-Aug-2021	15-Jul-2021	11-Aug-2021	152
5	ESI	Aug-2021	15-Sep-2021	15-Jul-2021	14-Sep-2021	152
6	ESI	Sept-2021	15-Oct-2021	15-Aug-2021	15-Oct-2021	157
7	ESI	Oct-2021	15-Nov-2021	15-Aug-2021	10-Nov-2021	174
8	ESI	Nov-2021	15-Dec-2021	15-Sep-2021	14-Dec-2021	172
Total						18,14,846



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4. From perusal of the aforesaid chart, it is noted that the assessee has deposited employee's contribution to PF/ESI on or before the due date as prescribed by the respective statute (ESI/PF). In such a scenario, no disallowance was warranted. However, in order to verify the relevant facts, we set aside the impugned order of the Ld.CIT(A) and restore the assessment back to the file of the AO with a limited purpose/direction to verify as to whether the assessee has remitted the employee's contribution to PF/ESI on or before due date for deposit of employee's contribution and if it is found that the assessee's claim (supra) is correct, then, no disallowance is warranted. Needless to say that proper opportunity may be given to the assessee while verifying the question of fact regarding deposit of employee's contribution as discussed (supra).

5. The next issue is regarding disallowance made by CPC alleging delayed deposit of Labour Welfare Fund contribution amounting to Rs.7,309/-. It has been submitted by the Ld.AR that this amount has already been disallowed by assessee *suo-moto* in its computation and therefore, no disallowance was warranted, because, such an action will tantamount to double taxation, which is not permissible. Since, we have restored the aforesaid issue to the file of the AO for the limited purpose/ verification, this issue also to be verified by the AO; and if the assessee's



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contention is found to be correct, then, no disallowance of Labour Welfare Fund is warranted.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 17th day of May, 2024, in Chennai.

Sd/-

(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 17th May, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF