

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.922/Del/2023

निर्धारणवर्ष/Assessment Year:2017-18

Ircon International Limited C-4, District Centre, Saket, Delhi. PAN No.AAAC10684H	<u>बनाम</u> Vs.	ACIT Special Range-4, Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Dr. Rakesh Gupta, Adv. & Shri Somil Agarwal, Adv.
Revenue by	Shri Waseem Arshad, CIT DR

सुनवाईकीतारीख/ Date of hearing:	19.03.2024
उद्घोषणाकीतारीख/Pronouncement on	27.05.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 24.02.2023 for the assessment year 2017-18. Assessee raised the following grounds: -

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.1,74,87,765/- account of Employee's Contribution to Provident Fund u/s 2(24)(x) r.w.s. 36(1)(va) of Income Tax Act and that too by recording incorrect facts and findings

and without considering the submissions of the assessee and without observing the principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.1,74,87,765/-on account of Employee's Contribution to Provident Fund u/s 2(24)(x) r.w.s. 36(1)(va), is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.

4. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Ld. Counsel for the assessee, at the outset, submits that the only issue in the appeal of the assessee is with respect to disallowance of employees share of Provident Fund contribution for the month of December, 2016. Ld. Counsel submits that assessee filed petition for admission of additional evidence in the form of notification issued by Provident Fund Organization dated 12.01.2017, wherein the Competent Authority under the Provident Fund Act allowed five days grace period for the deposit of employees contribution of Provident Fund by the employers in respect of December, 2016 by extending the date for deposit till

20.01.2017. Ld. Counsel submits that by virtue of this notification the employees' contribution which was remitted by the assessee on 17.01.2017 for the month of December, 2016 is allowable as deduction u/s 43B of the Act. Therefore, it is prayed that the additional evidence filed by the assessee in the form of notification of Provident Fund Organization may be taken on record and the appeal may be decided on merits.

3. Ld. DR submits that the only issue in appeal of the assessee is disallowance made u/s 43B of the Act in respect of Employees Contribution to PF & ESI. Ld. DR submits that in view of decision of the Hon'ble Supreme Court in the case of Checkmate Services Private Limited Vs. CIT (448 ITR 518) the Assessing Officer rightly made the disallowance of the contributions made towards PF & ESI which were paid beyond the due dates specified under the respective acts.

4. On hearing both the sides, we admit the additional evidence as the notification of the Provident Fund Authorities goes to the root of the matter and in the interest of justice, as this evidence is necessary for adjudication of the matter before us. The same is admitted.

5. Perusal of the notification issued by the Provident Fund Organization dated 12.01.2017, we observed that the Competent Authority under the Provident Fund Act allowed grace period of five days for remitting the December, 2016 Provident Fund contributions by 20.01.2017. This notification was issued on a number of references made by the employers highlighting the problems on the portal in upfront allotment of UAN, connectivity issues, login issues, website slowdown/hanging, awareness of new procedures etc. to remove the above difficulties faced by the employers in making the contributions the Provident Fund Organization allowed grace period of five days in remitting the December, 2016 contributions upto 20th January, 2017. It is the submission of the assessee that the December, 2016 contributions were made on 17.01.2017 and, therefore, the disallowance in respect of December, 2016 contributions is an allowable deduction u/s 43B of the Act. For proper verification, we feel it appropriate to restore this matter to the file of the Assessing Officer and adjudicate the issue. Thus, the matter is restored to the Assessing Officer with a direction to verify the circular issued by the PF Organization and also the contributions remitted by the assessee for the month of December, 2016 and if the AO finds that the PF contribution for the month of December,

2016 was made prior to 20.01.2017 the said contributions are directed to be allowed as deduction u/s 43B of the Act subject to verification. Grounds raised by the assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.05.2024

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 27.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi