

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.166/Nag./2024
(Assessment Year : 2018-19)

Goldline Pharmaceutical Ltd.
Plot no.103/F1, Leela Apartment
Narendra Nagar, Nagpur 440 015
PAN – AACCG2989F

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 16/05/2024

Date of Order – 16/05/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 16/01/2023, passed by the learned Commissioner of Income Tax (Appeals), Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. In its appeal, the assessee has raised following grounds:–

"1. In the facts and circumstances of the case and in law, National Faceless Appeal Centre / CIT(A) erred in confirming the action of the Id. AO(CPC) in disallowing the Employee contribution of Rs. 12,99,432/- by invoking provision of Section 36(1)(va), w.r.t. PF/ESI on the basis of tax audit report, where the possibility of error in accounting the same cannot be rule out, because employee is required to deposit his share of PF and ESIC after making the payment of salary to employee and also ignore the facts that assessee was deposit the same before the due date of filing the return of income."

3. The only grievance of the assessee is against disallowance on account of delayed payment of employee's contribution to PF/ESI under section 36(1)(va) of the Act.

4. The brief facts of the case, as emanating from the records are: The Central Processing Centre (CPC), while processing the assessee's income tax return under section 143(1) of the Act, made disallowance of ₹ 12,99,432, under section 36(1)(va) of the Act on ground that the employees' contribution towards Provident Fund was deposited by the assessee after the due date as mentioned in section 36(1)(va) of the Act.

5. On appeal, the learned CIT(A) also dismissed the assessee's appeal by observing as under:-

"4.4 I have carefully considered the statement of facts filed by the appellant and the judicial decision relied upon by the appellant. The issue under consideration has attained finality by the above said decision of Hon'ble Supreme Court of India. The Hon'ble Supreme Court held that, if the payments are not made within the due date specified in the particular law, the disallowance is warranted as "they are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments". In view of these, I am of the considered opinion that the CPC had made the adjustment rightly and therefore, the ground of appeal is dismissed, accordingly."

6. Aggrieved, the assessee is in further appeal before the Tribunal.

7. The learned Counsel for the assessee reiterating the submissions made before the authorities below and submitted that assessee has deposited the employees' contribution towards Provident Fund before filing the return of

income and therefore, the learned CIT(A) ought to have considered the claim of the assessee.

8. Per contra, the learned Departmental Representative vehemently relied upon the decision of the learned CIT(A) and submitted that this issue is no longer res integra and has been decided in favour of the Revenue by the Apex Court.

9. We have considered the rival submissions and perused the material available on record. In the present case, it is undisputed that the employee's contribution to provident fund was deposited by the assessee after the due date prescribed under the relevant statute but within the due date of filing the income tax return in accordance with section 139(1) of the Act. We find that the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. [2022] 143 taxmann. Com 178 (SC) held that payment towards employee's contribution to provident fund after the due date prescribed under the relevant statute is not allowable as deduction under section 36(1)(va) of the Act. The relevant findings of the Hon'ble Supreme Court, in the aforesaid decision, are as under:

"53. The distinction between an employer's contribution which is its primary liability under law - in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the latter retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the nonobstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction."

10. Therefore, respectfully following the decision of the Hon'ble Supreme Court in Checkmate Services (P.) Ltd. (supra), we see no legal infirmity in the impugned order passed by the learned CIT(A) warranting interference at our end. Accordingly, upholding the order passed by the learned CIT(A), all the grounds of appeal raised by the assessee are dismissed.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 16/05/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 16/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur