

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 4411/Mum/2023 (A.Y. 2019-20)

M/s. Lexicon Infrastructure Ltd.,

909, Dalamal Tower,
Free Press Journal Road, Nariman Point,
Mumbai - 400 021.

PAN: AAACL 1699M

..... Appellant

Vs.

ITO Ward 3(2)-1,

Aayakar Bhawan, M.K. Road,
Mumbai – 400 020.

..... Respondent

Appellant by : Shri Nishit Gandhi, Ld. AR
Respondent by : Shri Manoj Kumar Sinha, Ld. DR
Date of hearing : 09/05/2024
Date of pronouncement : 16/05/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi dated 12.10.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2019-20. The assessee has raised the following grounds of appeal: -

"GROUNDS OF APPEAL"

1.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre, Delhi ["the CIT (A)"] u/s. 250 of the Income Tax Act,

1961 ["the Act for short] erred in affirming the order of the Centralized Processing Centre ["CPC] passed u/s. 154 of the Act whereby it refused to rectify the errors committed in passing the intimation u/s 143(1)(a) of the Act by the CPC.

1.2 In the facts and circumstances of the case and in law, the order dated 12.10.2023 passed by the Ld. CIT (A) is bad in law since the very intimation/ order u/s 143(1) (a) passed by the CPC is bad in law and void in as much as the adjustments made therein are outside the purview of section 143(1) of the Act.

2.1 In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 29, 32,117/- in respect of unpaid Goods and Services Tax [GST] without appreciating that:

(i) Neither the said amount was routed through the Profit & Loss Account nor any deduction whatsoever had been claimed on the same by the Assessee and hence there is no question of disallowing the same and adding back to the Profit & Loss Account;

(ii) The addition confirmed by the Ld. CIT(A) has no sanction of law and in fact amounts to double disallowance since the Assessee computed its profit without claiming any deduction in respect of the GST as referred above; and;

(iii) In any case, the addition is contrary to extant law and deserves to be deleted.

2.2 In the facts and circumstances of the case and in law, the additions so made by the CPC and confirmed by the Ld. CIT (A) are to be deleted.

3.1 In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of Rs. 12, 89,427/- in respect of delayed payment of employees' contribution to provident fund without appreciating that:

(i) The said disallowance is outside the purview of section 143(1) and hence incorrectly made; and;

(ii) Without prejudice to the above, in any case, the amounts paid prior to the due date as per the Employees' Provident Funds Act could not be disallowed

3.2 In the facts and circumstances of the case and in law, the addition so confirmed are to be deleted.

4. The appellant craves leave to add, amend, alter, modify or delete all or any of the grounds raised in the appeal."

2. The brief facts of the case are that the assessee company filed its return of income belatedly u/s. 139(5) of the Act on 14.02.2020 declaring total income at Rs. 46, 55,620/-. The return of the assessee was processed u/s. 143(1)(a) of the Act vide intimation dated: 06.07.2020 and certain adjustments w.r.t.

section 43B and 36(1) of the Act relating to GST Liability and EPF dues amounting to Rs. 29,32,117/- and 12,89,427/- were made. The assessee being aggrieved with the same filed an application u/s. 154 of the Act before the CPC, Bengaluru vide dated: 17.08.2022, but the same was also rejected vide order u/s. 154 of the Act dated: 18.10.2022. The Assessee being aggrieved, filed an appeal before the Ld. CIT (A), who in turn confirmed the order u/s. 154 of the Act passed by the CPC, Bengaluru. The Assessee being further aggrieved filed the present appeal before us.

3. We have reviewed the intimation and order passed by the CPC, Bengaluru u/s. 143 (1)(a) and 154 of the Act respectively, order of the Ld. CIT(A) and submissions of the Assessee along with grounds raised before us. It is pertinent to mention here that the CPC, Bengaluru process the return based on information provided by the assessee in its return of income along with the Tax Audit Report. Which is generally a reporting part of the facts and a detailed expenses ledger is not there for verification to arrive at a conclusive finding. In such a situation, the only solution available before the Appellate Authorities is to refer the matter back to the file of Jurisdictional AO to verify the relevant expense ledger and appropriate challans.

4. As the assessee is claiming vide Ground No.2 w.r.t. GST Liability that “neither the said amount was routed through the P&L account nor any deduction whatsoever has been claimed on the same. Hence there is no question of disallowing the same and adding back and the same will amount to double disallowance.”As relevant details are not presented before us, i.e. Expense Ledger and relevant challans etc. It will not be appropriate for us to decide the matter based on partial information, hence the same is restored to the Jurisdictional AO for verification after providing the assessee a reasonable

opportunity of being heard and the assessee is directed to produce relevant ledgers along with audited accounts and relevant challans for verification before the Jurisdictional AO. **In the above terms, Ground No. 2 raised by the assessee is allowed for statistical purposes.**

5. In ground No. 3 the assessee claimed that the adjustment made by the CPC, Bengaluru is outside the purview of section 143(1)(a) of the Act and without being prejudiced to this if the amounts paid before the due dates as per EPF & MP Act, 1952 could not be disallowed. On this, in our considered view CPC, Bengaluru is well within its power while exercising powers u/s. 143(1)(a) of the Act, especially considering the scenario after the decision of the Hon'ble Apex Court in the case of **[2022] 143 taxmann.com 178 (SC) Checkmate Services Pvt. Ltd. v. CIT-1**. As far as an alternative plea is concerned, that again requires a detailed verification, concerning relevant records and challans etc. It will not be appropriate for us to decide the matter based on partial information, hence the same is restored to the Jurisdictional AO for verification after providing the assessee a reasonable opportunity of being heard and the assessee is directed to produce relevant ledgers along with audited accounts and relevant challans for verification before the Jurisdictional AO. **In the above terms, Ground No. 3 raised by the assessee is allowed for statistical purposes.**

6. **In the result, the appeal is allowed for statistical purposes.**

The order was pronounced in the open court on 16th May 2024.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 16/05/2024

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai