

आयकर अपीलीय अधिकरण 'ब' न्यायपीठ चेन्नई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

आयकर अपील सं./ ITA No.598/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

NAPC Limited,
1A, Royal Court, First Floor,
No.41, Venkatnarayana Road,
T. Nagar,
Chennai 600 017.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 2(1)
Chennai

[PAN: AACCN 3625P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. Yeshwanth Kumar, C.A.
: Shri. S. Easwar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 20.05.2024

घोषणा की तारीख /Date of Pronouncement

: 03.06.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) Chennai [CIT(A)] dated 12.01.2024 for Assessment Year 2018-19.

2. The Assessee has although raised seven grounds of appeal but the sum and substance the solitary ground for adjudication is as under:-

'7. For that the Commissioner of Income Tax (Appeals) erred in not considering the remand report dated 06.06.2023 submitted by the Assessing Officer wherein the Assessing Officer had stated that what was required was a disallowance u/s.2(24)(x) r.w.s.36(1)(va) to the tune of Rs.3,60,326/- as against the original disallowance of Rs.2,06,27,491/-'.

3. Briefly, in the facts of the present case, the assessee is a public Limited Company engaged in the business of civil contract, filed its return of income by admitting a loss of Rs.24,14,02,912/- u/s 139(1) of the Income Tax Act,1961 ('the Act' in short) on 26.09.2018. Assessing officer ('AO' in short) also made disallowance u/s 2(24)(x) r.w.s36(1)(va) of the Act of Rs.2,06,27,491/- by the Assessment order dated 18.09.2021 u/s 143(3) of the Act.

4. Aggrieved against the order of AO u/s 143(3) dated 18.09.2021, assessee filed appeal before the CIT(A). Ld.CIT(A) called remand report from the AO on additional evidence filed by the assessee under Rule 46A. AO submitted his detailed remand report on 06.06.2023. On the issue of disallowance u/s 2(24)(x) r.w.s36(1)(va) of the Act, AO submitted in the remand report as under:

'Issue (d): Disallowance a sum of Rs. 2,06,27,491/- u/s. 2(24)(x) r.w.s 36(1) (va) as delayed remittance of employees contributions towards PF/ESI

The assessee company has remitted a sum of Rs. 2,39,44,829/- towards PF/ESI contributions during the previous year relevant to assessment year 2018-19.

On verification of records available, it is found that while processing the Return of Income u/s. 143(1) CPC has also disallowed Rs. 2,02,67,165/- mentioning that Any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other

fund for the welfare of employees to the extent not credited to the employees account on or before the due date [36(1)(va)]

However out of Rs. 2,39,44,829/-, a sum of Rs. 2,06,27,491/- was remitted beyond the due date but before the due date for filing the return of income u/s. 139(1). Hence, While passing the assessment order, the Assessing Officer NFAC ha has disallowed the same.

The disallowance of Rs. 2,06,27,491/- once again in assesment order passed u/s. 143(3) resulted in double disallowance. Hence the balance amount of Rs.3,60,326/-i.e (Rs. 2,06,27,491/-Rs. 2,02,67, 165/-) should be disallowed.

With the above, it is submitted that the case may be decided on merits."

5. Despite remand report, Ld.CIT(A) sustained the disallowance u/s 2(24)(x) r.w.s36(1)(va) of the Act of Rs.2,06,27,491/-.

6. Further aggrieved against the impugned order of Ld.CIT(A) dated 12.01.2024, assessee is before us. Ld. Authorised representative ('AR' in short) submitted that Ld.CIT(A) has completely ignored the remand report of AO on this issue and sustained the disallowance u/s 2(24)(x) r.w.s36(1)(va) of the Act of Rs.2,06,27,491/-.

7. Per contra, Ld.DR has not controverted the assertions of the Ld.AR of assessee.

8. We have heard the parties, perused the materials available on record, remand report and gone through orders of the authorities below. We find that while processing the Return of Income u/s 143(1), CPC has already been made disallowance of Rs.2,02,67,165/- out of Rs.2,06,27,491/- u/s 2(24)(x) r.w. Section

36(1)(va) of the Act. Therefore, the disallowance of Rs.2,02,67,165/- once again in assessment order u/s 143(3) is amount to double deduction. Although this fact has already been brought on record by the AO in his remand report filed however, the same was ignored by the Ld.CIT(A). Therefore, in the light of the above facts and circumstances of the case, we allow the prayer of the assessee and restrict the disallowance to Rs.3,60,326/- and also delete the disallowance of Rs.2,02,67,165/- u/s 2(24)(x) r.w. Section 36(1)(va) of the Act.

9. In result, appeal of the assessee in ITA No.598/CHNY/2024 for assessment year 2018-2019 is partly allowed.

Order pronounced in open court on 3rd day of June, 2024 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated :03-06-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF