

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.923/MUM/2024
Assessment Year 2019-20**

FLP Trading Pvt. Ltd.

M/s. Kalyaniwalla & Mistry LLP,

Esplanade House, 2nd Floor,

29, Hazarimal Somani Marg,

Fort, Mumbai – 400 001

PAN:AADCF-3408-R

- Appellant

Vs.

The Asstt. Director of Income Tax,

Centralized Processing Centre, Bengaluru

[The Deputy Commissioner of Income Tax-1(1)(1)]

Room No.533, 5th Floor, Aaykar Bhavan,

M.K.Road, Mumbai- 400 020

- Respondent-

Appellant by : Shri Amey Wagle /Ms. Pryanka Jain

Respondent by : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 03/06/2024

Date of Pronouncement : 06/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 31-01-2024 passed by LdAddl.CIT/JCIT(A)-1, Chandigarh and it relates to the assessment year 2019-20. Following two issues are urged in this appeal:-

(a) Addition of Provision for Gratuity made u/s 43B of the Act.

(b) Addition of employees contribution u/s 36(1)(va) of the Act.

2. The Ld A.R appearing for the assessee submitted that the above said two adjustments were made by CPC u/s 143(1) of the Act while processing the return of income filed by the assessee and they were

challenged before Ld CIT(A). However, the Ld CIT(A) dismissed the appeal of the assessee on the ground that there is delay in filing the appeal. He submitted that the assessee received the intimation u/s 143(1) of the Act during Covid period on 15-09-2020 and the assessee filed the appeal before Ld CIT(A) on 21-09-2021, which was also during Covid period. He submitted that the limitation period has been extended by Hon'ble Supreme Court upto 90 days from 01-03-2022, vide its order dated 10th January, 2022 passed in Miscellaneous Application No.21 of 2022. However, the Ld CIT(A) did not notice this important aspect. Accordingly, he submitted that the appeal filed before Ld CIT(A) was well within the time limit granted by the Hon'ble Supreme Court.

3. With regard to the merits of the case, the Ld A.R submitted that the assessee does not press the ground relating to the addition of employees PF/ESI made u/s 36(1)(va) of the Act.

4. With regard to the addition of Provision for Gratuity, the Ld A.R submitted that the assessee itself had voluntarily disallowed the same while computing total income. However, the CPC has again disallowed the very same amount while processing return of income without noticing that the assessee had already disallowed the same and the same has resulted in double disallowance of same amount.

5. We heard Ld D.R and perused the record. Having regard to the facts submitted by Ld A.R, we notice that there was no delay in filing appeal before Ld CIT(A). Hence, we are of the view that the Ld CIT(A) was not justified in dismissing the appeal of the assessee treating the same as time barred.

6. On merits, we notice that the assessee did not press the ground relating to disallowance of employees PF/ESI made u/s 36(1)(va) of the Act. Hence the said addition requires to be confirmed.

7. The remaining issue relates to the disallowance of Provision for Gratuity. The Ld A.R submitted that the assessee has voluntarily disallowed the said expenditure while computing total income and the CPC has again disallowed the same while processing the return of income, resulting in double disallowance of same amount. There cannot be any dispute that double disallowance of same expenditure is not permitted. However, we are of the view that the above said claim of the assessee requires verification at the end of the AO. Accordingly, we restore this issue to the file of the AO with the direction to verify the above said claim of the assessee and delete the disallowance made u/s 143(1)(a), if the assessee had already disallowed the said amount while computing total income. Accordingly, the order passed by Ld CIT(A) is set aside.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 06th June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Mumbai, Date : 06th June, 2024

VM.

Sd/-

(B.R. Baskaran)
Accountant Member

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai