

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER
ITA No. 1813/Del/2023, A.Y.2018-19

ITO, Ward 62(1), New Delhi	Vs.	Sh. Shyam Pal H-2/156, Sultan Puri New Delhi-110086 PAN: AAMPP9198C
(Appellant)		(Respondent)

Appellant by	Sh. Anuj Garg, Sr. DR
Respondent by	None

Date of Hearing	05/06/2024
Date of Pronouncement	13/06/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal of the Revenue is filed against the order dated 26.08.2022 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short 'NFAC'), New Delhi [In Short, the 'CIT(A)'].

2. The Revenue challenged the relief granted by the Ld. CIT(A) on the issue of delayed payment of employees' contributions beyond the stipulated time period prescribed under section 36(1)(va) r.w.s. 43B of the Income Tax Act, 1961 (In short, the 'Act') and expenditure disallowable under section 37 of the Act.

3. The facts, in brief, giving rise to this appeal are that the respondent/assessee, an individual, filed his Income Tax Return (In short, the 'ITR'), on 29.10.2018, declaring income Rs.14,06,190/-. The ITR was processed under section 143(1) of the Act by the Assessing Officer-CPC by disallowing the employees' contribution to Provident Fund & ESI of Rs.50,93,755/- under section 36(1)(va) r.w.s. 43B of the Act as the same was deposited after the stipulated time period. Aggrieved, the respondent/assessee filed an application under section 154 of the Act, which was also dismissed. Thereafter, the respondent/assessee filed appeal, challenging the disallowance of Rs.50,93,755/-, against the order passed under section 154 of the Act, which was allowed by the Ld. CIT(A) vide impugned order. Aggrieved, the Revenue filed appeal before the Tribunal.

4. There is delay of 230 days in filing this appeal. There is no delay condonation application, on the record, filed by the appellant/Revenue. However, the Ld. Sr. DR prayed for condonation

of delay. Further, he contended that the appellate order is contrary to the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. In Civil Appeal No. 2833 of 2016. On specific query related to tax effect below the threshold limit for filing appeal and how this appeal covered by the exceptions prescribed in para-10 of the Circular No. 3/2018 dated 11.07.2018 and the Circular No. 17/2019 dated 08.08.2019, the Ld. DR drew our attention to the copy of authorization noting under section 253(2) of the Act wherein it has been mentioned that the case falls in the exceptions laid down in the Circular No.17/2019 dated 08.08.2019 as the decision violates the provisions of law under section 36(1)(va) of the Act. He prayed that the interest of Revenue should be protected to the extent if the matter falls in the exceptions for contesting the low tax effect appeals.

5. None attended on behalf of the respondent/assessee.

6. We have heard the Ld. Sr. DR and have perused the material available on the record. The CBDT Circular No.17/2019 dated 08.08.2019 prescribes threshold limit of tax effect of Rs.50 Lakhs for filing appeals before the Tribunal subject to following exceptions as per para-10 of the Circular No. 3/2018 dated 11.07.2018:

10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect

entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or*
- (d) Where the addition relates to undisclosed foreign assets/ bank accounts.*

7. Undisputedly, the tax effect in this case is Rs.14,06,190/-, which is below the monetary limit prescribed by the CBDT for filing appeal. We are of the considered view that, this appeal, prima-facie, is not covered by any of the above exceptions. Hence, we do not find any merit in the justification for filing the appeal as per the noting of the PCIT. Further, it is also evident from the record that there is no delay condonation application filed by the Revenue. Even if the delay is condoned, the appeal of the Revenue is not maintainable due to low tax effect. Hence, we are refraining to comment on merit of the case. In view of the above, this appeal filed by the Revenue is hereby dismissed subject to liberty to the Revenue to approach the Tribunal for re-institution of appeal, if the requisite material is brought on the record to show that this appeal is covered by the exceptions prescribed in para-10 of the Circular No. 3/2018 dated 11.07.2018.

8. In the result, the appeal of the Revenue stands dismissed as above.

Order pronounced in open Court on 13th June, 2024

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 13/06/2024
Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI