

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.71/KOL/2024  
Assessment Year: 2020-21**

Marda Collections Pvt. Ltd. 37F, Paddapukur Road, Kolkata-700020. (PAN: AAECM8210F)	Vs	DCIT, Circle-7(1), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri B. K. Agarwal, AR  
Respondent by : Shri Manoj Kumar Pati, Addl. CIT, Sr. DR

Date of Hearing : 19.06.2024  
Date of Pronouncement : 21.06.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeals), Addl/JCIT(A)-2, Jaipur [hereinafter referred to as "the Ld. CIT(A)"] passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21 dated 17.11.2023 passed against the intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") by the ADIT, CPC, Bangalore (hereinafter referred to as the "AO") dated 18.12.2021.

2. The assessee has raised the following grounds of appeal:

- 1. Ld. CIT(A), NFAC has erred in confirming the addition of unpaid professional tax deducted from employees salary u/s. 43B of the Income Tax Act, 1961.*
- 2. Ld. CIT(A), NFAC has erred in holding that professional tax deducted from employees salary is deemed income under section 2(24)(x).*
- 3. Ld. CIT(A) NFAC has erred in holding that unpaid professional tax deducted from employees salary is covered under 43B(a) of the Income Tax Act, 1961.*

*4. The appellant craves leave to add, delete or modify any ground of appeal either during or before the hearing of the appeal.”*

3. Ground No. 4 is general in nature and does not require any specific adjudication.

3. Brief facts of the case as mentioned in Form No. 35 filed before the Ld. CIT(A) are that the assessee is a private limited company engaged in the business of wholesale and retail sale of garments, apparels, footwear and other products and also general commission agents. The accounts are subject to tax audit. The assessee filed its return of income declaring total income of Rs.2,61,94,820/-. The return has been processed by the CPC making adjustments of Rs.16,80,374/- in respect of delay in payment of employee's contribution to PF and ESI and Rs.4,57,250/- in respect of unpaid professional tax under section 43B. The income was assessed at Rs.2,83,32,440/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). While the ground relating to addition of Rs.16,80,374/- on account of delayed payment of employees' contribution to PF & ESI u/s. 36(1)(va) of the Act was withdrawn before the Ld. CIT(A) on account of the Hon'ble Supreme Court decision in the case of Chekmate Services Private Limited, Civil Appeal No. 2833 of 2016, the Ld. CIT(A) confirmed the addition on account of unpaid professional tax of Rs.4,57,250/- u/s. 43B of the Act. Before the Ld. CIT(A), it was claimed that the assessee had not claimed the same as exempt and it was also contested that the unpaid professional tax was also not income of the assessee as defined in section 2(24) of the Act. The Ld. CIT(A) held that as per Article 276(2) of the Constitution of India, the employers are required to deduct professional tax from the salary of the employees in each month and pay to the Government account. The salaries paid to the employees formed part of the expenses of the employment and are routed through P&L Account. The auditor of the assessee in Form No. 3CD, column 26(i)(B)(b) had mentioned that an amount being liability of the assessee

amounting to Rs.4,57,250/- had not been paid on or before the due date of furnishing of the return of income and was thus not allowable u/s. 43B(a). Therefore, the Ld. CIT(A) was of the view that the assessee had deducted the Professional Tax from the salaries of the employees but had not paid it to the Government account and confirmed the addition of Rs.4,57,250/- made by the AO u/s. 43B of the Act.

4. Before us, the assessee through its written submission has submitted as under:

*“1. The West Bengal State Tax on Professions, Trades, callings and Employments Act, 1979 is an Act to provide for the levy and collection of tax on professions, trades, callings and employments for raising additional resources for the benefit of the State and for matters connected therewith or incidental thereto.*

*2. Though Employers have been entrusted with the duty to collect and deposit professional Tax on employees salary after deducting it from their salary, it is the tax of employee reference is drawn to section 4(b) of the Act which exempts the employers to deducted professional tax from the salary of those employees who submit declaration to the employees that they shall obtain certificate of enrolment themselves and pay tax themselves.*

*3. Further Rule 13(4) specifically mentions that Notwithstanding provisions contained in sub rules (1) and (3) of this rule the liability of an employee to pay tax shall not cease until the due amount of tax in respect of him has been fully paid to the Government Account and without prejudice to the aforesaid provisions, the said amount may be recovered from him if the employer of the prescribed authority is satisfied that the amount has not been deducted from his salary or wages.*

*In conclusion this is a tax raised by the state to augment its revenue and no where it is a welfare fund. Further though employers have been entrusted to collect the tax from employees and deposit the same with the revenue authority employee's liability does not cease to exit if employer fails to deposit applicable tax on his employment.”*

5. Regarding argument of the assessee that the amount does not fall under the ambit of section 43B, the Ld. CIT(A) mentioned that clause (a) of section 43B mentions about any sum payable by the assessee by way of tax, duty, cess, fee etc. under any law for the time being in force and since the duty to deposit Professional Tax deducted from the salaries of the employees is cast upon the employers, the same falls u/s. 43B(a) and the employer cannot withhold this tax with them without depositing it with the government account and, therefore, the addition of

Rs.4,57,250/- made by the AO was confirmed and the appeal was dismissed.

6. Before us while as many as four grounds of appeal have been raised, however, first three grounds (ground nos. 1, 2 and 3) relate to the addition made u/s. 43B(a) of the Act on account of professional tax and the claim that the same does not form part of income of the assessee u/s. 2(24)(x) of the Act.

7. We have heard the rival submissions and the argument which was raised before the Ld. CIT(A) was also reiterated before us that the Professional Tax was not claimed as deduction. The ld. DR argued by saying that the Professional Tax was embedded in the salary of the employee which the assessee was required to deduct as per law and deposit it in the government account and since the salary to be paid was claimed as deduction, therefore, inter alia, professional tax deducted from the salary was also being claimed as a deduction and, therefore, section 43B(a) was applicable as the same had not been deposited in the government account. On a query raised from the Bench as to whether the amount was deposited till date, the ld. AR conceded that the same relating to FY 2019-20 relevant for AY 2020-21 has not been deposited till date, however, the professional tax pertaining to the earlier year was paid during the year under consideration. The definition of income as per section 2(24) is an inclusive definition and is not an exhaustive one thereby implying that even a sum other than that mentioned in section 2(24) can be considered as income. Further, the assessee had claimed payment of salaries as deduction and professional tax is deducted from the salary of the employee and is required to be deposited in the government account by the employer within due date. However, the same has not been deposited even till date, therefore, since it is in the nature of tax which has not been deposited in time, therefore, the

provision of section 43B(a) are applicable and the decision of the Ld. CIT(A) upholding the action of the AO is hereby confirmed.

8. We may add as was also stated during the course of the hearing that as per the provision of section 43B of the Act, which is an overriding section, a deduction otherwise allowable under the Act in respect of the amount mentioned in various clauses of section 43B shall be allowed, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him, only in computing the income referred to in section 28 of the previous year in which such sum is actually paid by him. Hence, the deduction relating to professional tax which is embedded in the deduction claimed under the head salary and is not allowable on account of the provision of section 43B(a) of the Act, shall be allowed in the year in which it is paid. The assessee claimed that a part of the same relating to earlier year was paid during the year which should be allowed. The assessee may file necessary evidence in this regard before the Ld. AO who shall examine the same and allow the deduction on account of unpaid professional tax of the past years paid during the year, if the same had not been allowed as a deduction in the earlier years or has been specifically disallowed in the preceding assessment years. Hence, ground nos. 1 & 2 of the assessee are dismissed with the direction as mentioned above.

9. Ground no. 3 is general in nature and does not require any separate adjudication.

10. In the result, appeal of the assessee is dismissed and further directions as per para 8 are issued to the AO.

Order pronounced in the open court on 21<sup>st</sup> June, 2024.  
Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Rakesh Mishra)  
Accountant Member

***Dated: 21st June, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A)-2, Jaipur
  4. The CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata