IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.179/Nag./2022
(Assessment Year : 2014–15)

Shriram Dadaji Matte
77, Gazetted Officers Colony
West High Court Road, Civil Lines
Nagpur 440 001 PAN – AAUPM9106H ……. Appellant

v/s

Dy. Commissioner of Income Tax
Circle–1, Nagpur ……. Respondent

ITA no.180/Nag./2022
(Assessment Year : 2015–16)

Shriram Dadaji Matte
77, Gazetted Officers Colony
West High Court Road, Civil Lines
Nagpur 440 001 PAN – AAUPM9106H ……. Appellant

v/s

Dy. Commissioner of Income Tax
Circle–2, Nagpur ……. Respondent

Assessee by : Shri R.K. Ganeriwal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/06/2024	Date of Order – 24/06/2024

O R D E R

PER V. DURGA RAO, J.M.

The present appeals have been filed by the assessee challenging the impugned orders of even date 11/05/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2014–15 and 2015–16.

ITA no.179/Nag./2022
Assessee's Appeal – A.Y. 2014–15

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

"1. The order passed by learned CIT(A) is illegal, incorrect, bad in law and without natural justice.

2. The order passed beyond the scope of assessment as case selected for limited scrutiny is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

3. The addition of Rs.54,8937- (47,847.42/- + 7,045/-) on account of Interest on Investment U/s 14A of levied on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

4. The addition of Rs.50,040/- on account of delay in payment of employee contribution to PF levied on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

5. The addition of Rs.21,175/- on account of delay in payment of TDS/TCS levied on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

6. The addition of Rs.1,000/- on account of penalty for delay in payment of Car Loan levied on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted

7. Appellant craves a right to add, modify, alter or withdraw and of the ground/s of appeal during the course of hearing."

3. Grounds no.1, 2 & 7, being general in nature, hence no separate adjudication is contemplated.

4. Ground no.3, relates to addition of ₹ 54,8937 (₹ 47,84,742 + ₹ 7,045) on account of interest on investment under section 14A of the Income Tax Act, 1961 ("*the Act*").

5. The appellant is an individual having business in the name and style of *"M/s. Matte Associates"*, which is engaged in the business of works contract mainly in demolition job work. The appellant filed its return of income for the

assessment year 2014–15, on 21/11/2014, declaring total income of ₹ 78,74,420. The said return of income was processed under section 143(3) of the Act. The Assessing Officer concluded assessment by making a disallowance under section 14A of the Income Tax Act, 1961 (*"the Act"*) for business investment made by the assessee on purchase of shares for ₹ 22,50,000, on prorate basis of interest paid of ₹ 42,51,412, liability on loans. The Assessing Officer while relying upon the judgment of the Hon'ble Bombay High Court in M/s. Godrej & Boyce Mfg. Co. Ltd., the judgment of the Hon'ble Supreme Court in Mzxopp Investment Ltd. and the CBDT's Circular no.5/20174 dated 11/02/2014.

6. The assessee being aggrieved, filed appeal before the learned CIT(A), who confirmed the order of the Assessing Officer.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that there is no exempt income during the year and hence, no disallowance is possible under section 14A of the Act in view of the judgment of the Hon'ble Delhi High Court in PCIT v/s M/s. Era Infrastructure (India) Ltd., ITA 204 of 2022 & C.M. Appln. No.31445 of 2022, judgment dated 20/07/20202, wherein at Para–5, is reproduced below:–

> *"5. However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced hereinbelow:*
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> *"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section*

14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

5. This amendment will take effect from 1st April, 2022.

6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years."

8. In view of the above, no disallowance can be made under section 14A r/w rule 8D of ₹ 54,893. Accordingly, we set aside the impugned order passed by the learned CIT(A) and allow the ground no.3, raised by the assessee.

9. The issue arising from ground no.4, relates to addition of ₹ 50,040, on account of delayed payment of employee's contribution to Provident Fund.

10. The Assessing Officer while processing the assessee's return of income made the adjustment of ₹ 50,040, in the return of income on account of deemed income under section 36(1)(va) r/w section 2(24)(x) of the Act for the late deposit of employee's contribution to Provident Fund and ESIC on the ground that these payments were not made within the prescribed due date as per the governing statutes and deposited late in the light of the provisions of section 224)(x) r/w section 36(1)(va) of the Act by relying upon the information given by the auditor in Form no.3CD.

11. The learned CIT(A), relying upon certain judicial pronouncements and in view of the clarificatory amendments made by the Finance Act, 2021, to

section 36(1)(va) and section 43B of the Act, held that the contention made in the submissions are not acceptable and the addition of ₹ 50,040, made by the Assessing Officer for not depositing employee's contribution to the Provident Fund and ESI covered under section 36(1)(va) rws 2(24)(x) of the Act but paid to the respective funds after the due dates are correctly held as deemed income and, therefore, the disallowance is hereby confirmed as the said late payments are not covered under 43B of the Act.

12. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that it is undisputed fact that payment of PF & ESI amounting to ₹ 50,040, was not made within the due date prescribed under the PF & ESI Act, but payment has been made much before the due date of filing the return of income. However, Hon'ble Supreme Court in the case of Checkmate Services Private Limited v/s CIT, in Civil Appeal No. 2833 of 2016 dated 12.10.2022, has decided this issue against the Assessee. The relevant portion of the judgment vide Para–53–55 are reproduced below:–

> *"53. The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.*
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> *54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override*

the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."

13. We respectfully following the above judgment of the Hon'ble Supreme Court, the ground no.4, raised by the assessee is dismissed.

14. Ground no.5, raised by the assessee relates to the addition of ₹ 21,175, on account of delay in payment of TDS/TCS.

15. Having heard the rival parties and on a perusal of the material available on record, we find that the addition on account of delay in payment of TDS / TCS cannot be made because the TDS is noting but income tax paid in advance before the due date. Since the interest on income tax is disallowable

expenditure, therefore, we hold that the interest on late payment of TDS is also disallowable. Thus, the ground no.5, raised by the assessee is dismissed.

16. Ground no.6, relates to the addition of ₹ 1,000, made by the Assessing Officer and confirmed by the learned CIT(A) is on account of penalty for delay in payment of Car Loan.

17. Having heard the rival parties and on a perusal of the material available on record, we find that since the penalty is not levied on account of any contravention of law. The disallowance of ₹ 1,000, is not leviable because the making a delayed payment is not an offence in contravention of any law. Accordingly, we allow deduction of such penalty from the taxable income. Ground no.6, is allowed.

18. In the result, appeal filed by the assessee for the A.Y. 2014–15 is partly allowed.

ITA no.180/Nag./2022
Assessee's Appeal – A.Y. 2015–16

19. The assessee has raised following grounds of appeal:–

"1. The order passed by learned CIT(A) is illegal, incorrect, bad in law and without natural justice.

2. The order passed beyond the scope of assessment as case selected for limited scrutiny is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

3. The addition of ₹ 61,740, levied on account of employee's share of contribution in Provident Fund deposited after due date on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

4. th e addition of ₹ 9,597, levied on account of interest u/s 201(1A) / 206C(7) on appellant is incorrect, illegal, bad in law and without natural justice and the same is to be deleted.

5. Appellant craves a right to add, modify, alter or withdraw and the ground/s of appeal during the course of hearing."

20. Grounds no.1, 2 and 5, being general in nature, hence no separate adjudication is required.

21. Ground no.3, relates to addition of ₹ 61,740, made on account of employee's share of contribution towards Provident Fund deposited after due date.

22. After haring both the parties and on a perusal of the material available on record, we find that similar issue has been raised by the assessee in its appeal being ITA no.179/Nag./2022, for the assessment year 2014–15, wherein, vide ground no.4, we have decided this issue against the assessee and in favour of the Revenue in Para–12 and 13, of this order. Since the issue for our adjudication being identical, except variation in figures, cconsistent with the view taken therein in assessee's own case cited supra and respectfully following the findings given therein, uphold the impugned order passed by the learned CIT(A) and dismiss the ground no.3, raised by the assessee.

23. Ground no.4, relates to the addition of ₹ 9,597, towards interest paid under section 201(1A) / 206C(7) of the Act.

24. After hearing both the parties and on a perusal of the material available before us, we find that the interest on late payment of TDS is neither an expenditure wholly and exclusively incurred for the purpose of business and

further it is a payment which is in the form of tax is not an allowable expenditure. Consequently, ground no.4, is dismissed.

25. In the result, appeal filed by the assessee for the assessment year 2015–16 is dismissed.

26. To sum up, appeals filed by the assessee for the assessment year 2014–15 is partly allowed and for the assessment year 2015–16 is dismissed.

Order pronounced in the open Court on 24/06/2024

Sd/-	**Sd/-**
K.M. ROY	**V. DURGA RAO**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

NAGPUR, DATED: 24/06/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur