

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 178/Ind/2024
Assessment Year : 2019-20

Jila Sahakari Kendriya Bank Maryadit, 33,Khandwa Road, Khargone (Assessee/Appellant)	बनाम/ Vs.	CPC / ITO, NFAC (Revenue/Respondent)
PAN: AAATJ0529K		
Assessee by	Shri Subhash Jain, AR	
Revenue by	Shri Ram Kumar Yadav, CIT DR and Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.06.2024	
Date of Pronouncement	28.06.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 08.02.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of rectification-order dated 05.07.2023 passed by learned CPC ["AO"] u/s 154 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on the grounds mentioned in Form No. 36 (Appeal Memo).

2. The issue involved in present case is the disallowance of Rs. 3,39,78,223/- made by AO u/s 36(1)(va) on account of employees'

contribution to Provident Fund (P.F.) collected by assessee but not deposited upto the due dates under P.F. law.

3. Ld. AR for assessee carried us to the impugned order passed by CIT(A) which also narrates the factual background of case and decision of CIT(A); the same is re-produced below:

"4. CIT's decision :

All the grounds of appeal are clubbed together for the sake of convenience and disposed as under :

4.1 The appellant has filed the return of income for A.Y. 2019-20 on 17.10.2019 declaring a total income of Rs. 32,24,44,460/-. The CPC processed the return u/s 143(1)(a) of the Income-tax Act, 1961 on 21.02.2023 by disallowing non-payment of collection of employee contribution of PF of Rs. 3,39,78,223/-. Thereafter, the appellant filed a rectification application u/s 154 on 05.07.2023 before the CPC, which has been rejected by the CPC and passed the order on 05.07.2023 without assigning any reason. The appellant has challenged the order u/s 154 in the present appeal.

4.2 In this case, the CPC had disallowed non-payment of collection of employee contribution of PF of Rs. 3,39,78,223/- during the year under consideration while processing the return u/s 143(1). The appellant could have filed an appeal against the intimation u/s 143(1) as per the provisions of the Act. However, it appears that the appellant has not filed an appeal against the intimation u/s 143(1). Thereafter, the appellant has filed an application u/s 154 before the CPC which has been rejected and hence the appellant has filed the present appeal against the order u/s 154. In this regard, it is stated that the original cause of action in the present case had arisen at the stage of the proceedings u/s 143(1) and not u/s 154. The appellant is trying to make a back door entry by filing an appeal against the order u/s 154, the original cause of action for which had arisen at an earlier point of time during the proceedings u/s 143(1). Therefore, as the original cause of action has arisen at the stage of 143(1), the issue cannot be adjudicated upon in the present appeal and further there is no mistake apparent from record at the stage of 154. Therefore the grounds of appeal are dismissed.

5. In the result, appeal is dismissed."

4. Thereafter, Ld. AR made two-fold submissions as under:

(i) That the AO has made disallowance of Rs. 3,39,78,223/- u/s 36(1)(va) on account of employees' contribution to P.F. collected by assessee but not deposited upto the due dates under P.F. law. But the factual position is such that the assessee has made all payments by the due dates under P.F. law and there is not delay at all which is clearly evident from the details of 'due dates' and 'actual payment dates' reported by auditors of assessee in Clause 20(b) of Form No. 3CD (Page 94/95 of Paper-Book) as well as the challans of payments filed in the Paper-Book (Page 132-143 of Paper-Book). Still the disallowance has triggered only because the auditors have, by mistake, oversight or due to technological issue, reported "0" amounts in the column provided in aforesaid Clause 20(b) of Form No. 3CD for reporting "*the actual amount paid*". However, the facts remain that the assessee has paid all amounts by respective due dates and therefore no disallowance was to be made u/s 36(1)(va).

(ii) That the CIT(A) has dismissed assessee's appeal on a technical reason that the assessee has not filed appeal against the intimation u/s 143(1) in which the impugned disallowance was originally made by AO. According to CIT(A), the assessee has gone into rectification u/s 154 and thereafter filed appeal against order u/s 154 which is not acceptable. However, this technical issue raised by CIT(A) is already settled in favour of assessee by this very bench in the case of ***ITA 29/Ind/2024 Nancy Ann Miller***

Educational Trust Vs. Income-tax Officer, Ward-Exemption, Indore.

Therefore, the assessee deserves benefit of decision.

5. Ld. DR for revenue fairly agreed to the submissions of Ld. AR but proposed to remand this matter to the AO for verification of the payments made by assessee in terms of section 36(1)(va).

6. After a careful consideration, we adjudicate this appeal as under:

(i) On perusal of audit-report (Form 3CD), it is clearly discernible that the auditors have reported "0" amounts whereas the assessee has made payments to the P.F. from time to time. We agree that no disallowance can be made u/s 36(1)(va) to the extent the assessee has payments made to P.F. upto the due dates under P.F. laws.

(ii) So far as the point raised by CIT(A) that the assessee ought to have appealed against the intimation u/s 143(1) and not against rectification-order u/s 154 is concerned, a similar dispute has already been settled by this very bench in ***ITA 29/Ind/2024 Nancy Ann Miller Educational Trust Vs. Income-tax Officer, Ward-Exemption, Indore***; the relevant paras of order are as under:

"10(iii) The third and last point raised by CIT(A) is such that the assessee ought to have appealed against the intimation u/s 143(1) and not against rectification-order u/s 154. A similar dispute was decided by ITAT, Jodhpur in Akbar Mohammad Vs. CPC ITA No. 108 & 109/Jodh/2021 order dated 31.01.2022 wherein it was held thus:

"6.0 We have considered the submission of both the parties and perused the material available on record. In the present cases, it is not in dispute that the assessee deposited the contribution of PF & ESI belatedly in terms of section 36(1)(va) of the Act. However, the said deposits were made prior to filing of return of income u/s 139(1) of the Act.

6.1 Of course, it is a case in point that the assessee did not file any appeal against the intimations passed us 143(1) of the Act and the Ld. Sr. DR is right to the extent that the assessee cannot be given relief for that reason. However, it is also a settled law that the assessee cannot be taxed on an amount on which tax is not legally imposable. Although, the assessee might have chosen a wrong channel for redressal of his grievance, all the same, it is incumbent upon the Tax authorities to burden the assessee only with correct amount of tax and not to unjustly benefit at the cost of tax payer. Therefore, in the interest of substantial justice, we deem it expedient to restore the issue to the file of the Assessing officer with a direction to pass appropriate orders deleting the addition / disallowance after duly considering the settled judicial position in this regard, which have been decided in the three cases as enumerated above in Para 5."

7. Therefore, we hold that disallowance made by AO deserves to be deleted to the extent the assessee has made payments to P.F. upto due dates under P.F. law. However, the Ld. DR for revenue is very much correct in submitting that the matter should be remanded to the AO for verification of payments made by assessee before respective due dates as being claimed. Hence, we remand this matter back to the file of AO for necessary factual verification and thereafter delete disallowance to the extent the assessee has made payments to P.F. upto due dates under P.F. law. Ordered accordingly.

8. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 28.06.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.06.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore