

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.212/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2019-2020)

Sanjay Kumar Agrawal, C/O: Jagannath & Jagannath, Jobra Road, College Square, Odisha-753003	Vs	DCIT, Circle-1(1), Cuttack
PAN No. :AASPA 3785 E		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	16/07/2024
घोषणा की तारीख/Date of Pronouncement	:	16/07/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.04.2024, in DIN & Order No.ITBA/NFAC/S/250/2024-25/1064424309(1) for the assessment year 2019-2020.

2. The facts of the case are that the assessee has filed the return of income on 30.09.2019, declaring total income at Rs.100,31,070/-, which was processed u/s.143(1) of the Act vide order dated 14.05.2020, wherein an addition of Rs.66,49,490/- was made u/s.43B of the Act. Against this order the assessee filed an application u/s.154 of the Act before the AO stating that all the payments which were disallowed u/s.43B of the Act were made within the time prescribed under the relevant Acts and copy of challans were also submitted. The CPC vide order passed u/s.154 of the Act dated 03.08.2023 has not accepted the request of the assessee and

reaffirm the order passed u/s.143(1) of the Act. Therefore, aggrieved by the action of the CPC, the assessee has preferred the appeal before the Id. CIT(A) NFAC. The CIT(A), NFAC vide order dated 29.04.2024 has dismissed the appeal of the assessee by not accepting the contention of the assessee, thus, the present appeal is filed by the assessee before us.

3. During the course of hearing, Id. AR submitted that the assessee has shown GST payable at Rs.65,76,707/-, ESI payable of Rs.22,159/- and EPF payable of Rs.50,624/- in its Balance Sheet for the year ended 31.03.2019, wherein all these items were appeared at Schedule V of the Balance Sheet under the title Sundry Creditors & others. The auditor in audit report in column No.26(i) of Form 3CD has certified that these amounts were paid before the due date and date of payments were also mentioned which are as under :-

f)	any sum paid by the assessee as an employer not allowable under section 40A(9);	Nil			
g)	particulars of any liability of a contingent nature;	Nil			
	Nature of Liability	Amount	Remarks if any:		
h)	amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income;	Nil			
	Particulars	Amount	Remarks if any:		
i)	amount inadmissible under the proviso to section 36(1)(iii).	Nil			
22	Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.	Nil			
23	Particulars of payments made to persons specified under section 40A(2)(b).	As Per Annexure "C"			
24	Amounts deemed to be profits and gains under section 32AC or 32AD or 33AB or 33ABA or 33AC.	Nil			
	Section	Description	Amount	Remarks if any:	
25	Any amount of profit chargeable to tax under section 41 and computation thereof.	Nil			
	Name of Party	Amount of Income	Section	Description of transaction	Computation if any
					Remarks if any:
26	i) In respect of any sum referred to in clause (a),(b),(c),(d),(e),(f) or (g) of section 43B, the liability for which:-				
	A pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was				
	a) paid during the previous year;				
	Nature of Liability	Amount	Remarks if any:		Section
	b) not paid during the previous year;				
	Nature of Liability	Amount	Remarks if any:		Section
	B was incurred in the previous year and was				
	a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1);				
	Nature of Liability	Amount	Remarks if any:		Section
	b) not paid on or before the aforesaid date.				
	Nature of Liability	Amount	Remarks if any:		Section
	EPF PAYABLE	50624	Paid on 03.04.2019		Sec 43B(b) -provident /superannuation/gratuity/other fund
	ESI Payable	22159	Paid On 02.04.2019		Sec 43B(b) -provident /superannuation/gratuity/other fund
	GST Payable	6576707	Paid on 20.04.2019		Sec 43B(a) -tax , duty,cess,fee etc
	ii) State whether sales tax,goods & service Tax, customs duty, excise duty or any other indirect tax,levy,cess,impost etc.is passed through the profits and loss account.				
	No				
27	a) Amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.				
	SNO	Particulars	Capital Goods (Rs.)	Input (Rs.)	Service Tax (Rs.)
	1	Balance representing credits as at the beginning of the year			
	2	input available during the year		37004927	
	The credit availed is treated as advance duty and has not been debited to Profit and Loss account.				

4. In support of the payments, Id. AR drew our attention to the copies of challans available in paper book at pages 18 to 20. Ld.AR, thus, submitted that when the payments were made within the due dates prescribed under the relevant Act, and also no violation was made by the assessee, the CPC has wrongly made the disallowance. He further submitted that the Id. CIT(A) while dismissing the appeal of the assessee has wrongly invoked the provisions of Section 36(1)(va) of the Act on the entire amounts payable including GST payable which is not covered under the said Section. Further the employer contribution to PF & ESI were also not covered u/s.36(1)(va) of the Act, therefore, the Id. CIT(A) has not appreciated the facts of the case properly and wrongly applied the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. Vs. CIT, reported in [2022] 143 taxmann.com 178 (SC). He, therefore, prayed for deletion of addition so sustained by the lower authorities.

5. On the other hand, Id. Sr. DR supported the order of the lower authorities and submitted that the assessee in the audit report in Form 3CD in the Item at Sl.No.26(ii) has stated that the GST is not passed through profit and loss account and, therefore, provisions of Section 145A of the Act are applicable in the present case and, thus, the disallowance made by the CPC is correct. He further submitted that the assessee has not filed the details in correct column of the audit report, therefore, disallowances were made by the CPC and confirmed by the Id.CIT(A). He,

however, supported the order of the Id. CIT(A) and requested for confirming the disallowance so made.

6. We have considered the rival submissions and perused the material available on record. Surprisingly, in this case, the CPC as well as Id. CIT(A) have failed to appreciate the fact that the assessee has shown the amounts payable in its balance sheet as on the last date of the previous year which were paid by him within the prescribed time limit. To be specific, the ESI payable at Rs.22,159/-, which includes employee's contribution of Rs.3421/- was paid on 2nd April, 2019, which is evident from the copy of challan available at paper book at page 19. EPF payable of Rs.50,624/- including Rs.26543/- towards employees contribution was paid on 3rd April, 2018 as evident from copy of challan at page 20 of the paper book. Likewise, GST payable at Rs.6576706.65 was paid by the assessee on 20th April, 2019 and a copy of challan was filed at page 18 of the paper book. Since all the payments have been made within the due date as prescribed under the relevant Acts, there is no question of making any disallowance by invoking the provisions of Section 43B of the Act. The CPC/AO failed to appreciate this fact even in the rectification order passed u/s.154 of the Act where the assessee has filed the copies of the challans in support of his claim. Therefore, the disallowance made by the CPC and upheld by the Id.CIT(A) is hereby deleted.

7. With regard to the contention of the Id. Sr. DR for the application of Section 145A of the Act, it is seen that the CPC has made the disallowance u/s.43B of the Act and the Id. CIT(A) himself understood it

as the disallowance u/s.36(1)(va) of the Act and at no stage, provisions of Section 145 of the Act were invoked by the lower authorities. It is a case of processing u/s.143(1) of the Act which does not allow any such disallowance by invoking the provisions of Section 145A of the Act. This being so, this contention of the Id. Sr. DR is devoid of any merits and cannot be acceded to. In view of the discussion made hereinabove, the disallowance made at Rs.66,49,490/- is hereby deleted.

8. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 16/07/2024.

Sd/- (GEORGE MATHAN) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANISH AGARWAL) लेखा सदस्य/ ACCOUNTANT MEMBER
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कटक Cuttack; दिनांक Dated 16/07/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Sanjay Kumar Agrawal,
C/O: Jagannath & Jagannath,
Jobra Road, College Square,
Odisha-753003
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(1), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack