

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM

ITA No. 4479/Mum/2023

(Assessment Year: 2019-20)

Reliable Automotive Private
Limited

Plot No. 29, Sector 1,
Shirwane Gaon, Nerul,
Navi Mumbai-400 706

(Appellant)

Vs.

CIT (A), ADDL/ JCIT (A)-1
Circle 15(3)(1), Room
No.460,
4th Floor, Aaykar Bhavan,
Mumbai-400 020

(Respondent)

PAN No. AAACA9737D

Assessee by : Shri Abdul Darukhanawala,
AR

Revenue by : Shri Rajesh Meshram, DR

Date of hearing: 22.05.2024

Date of pronouncement 22.07.2024

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ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 4479/Mum/2023, for A.Y. 2019-20 is filed by Reliable Automotive Private Limited (assessee / appellant) against the appellate order passed by the Addl. Commissioner of Income Tax, (Appeals-1), Coimbatore [the learned CIT (A)] dated 12th October, 2023, wherein the appeal filed by the assessee against the order passed under Section 143(1) of the Income-



tax Act, 1961 (the Act), passed by the Central Processing Centre, dated 18th May, 2020, raising following grounds:-

"1) *The appellant objects to the Order dated 12th October, 2023 (Date of service of order dated 12th October, 2023) passed under Section 250 of the Income tax Act by the Commissioner of Income tax (Appeals), Income Tax Department.*

2) *The Learned Commissioner of Income Tax (Appeals) has erred in disallowing of Rs.35,61,884/- u/s.36(1) (va) read with section 2(24)(x) of the Income Tax Act, on the ground of delays in payment of employees contribution to PF & ESIC ignoring the fact that:*

a) *Payment aggregating to Rs.33,02,620/- were paid within due date prescribed under the Provident Fund and Employee's State Insurance Corporation Act.*

b) *Payment aggregating to Rs.2,59,264/- through delayed, have been paid during the financial year ended 31st March, 2019.*

3) *The Learned Commissioner of Income Tax (Appeals) erred in not allowing the appeal by not dropping the assessment order and not appreciating the fact that the case got transferred to Income Tax Department, Coimbatore at final stage and appellant was not given opportunity to be heard before passing the order.*

4) *The appellant craves leave to make addition, deletion or alteration to the above ground of appeal."*

02. Briefly stated facts shows that assessee filed its return of income for the year ended 31st march, 2019, for A.Y. 2019-20, on 26th October, 2019 at a total income of ₹6,23,20,040/-. Under Section 143(1)(a) of the Act, intimation was issued on 24th February, 2020, where employees' contribution to the provident fund and ESIC fee deposited beyond the due date prescribed under the respective Act, were disallowed.
03. The assessee filed application under Section 154 of the Income-tax Act, 1961 (the Act), which was rejected stating that appeal needs to be filed against the intimation.
04. Thus, an amount of ₹35,61,884/- were disallowed as employees' contribution is paid beyond the due date prescribed under the respective Act but deposited before the due date of filing of the return of income.
05. The assessee filed appeal before the learned CIT (A). The first claim of the assessee is that as it is paid before the due date of filing of the return of income same to be allowed. The second claim was that the Central Processing Centre should have considered the various decisions where the payment of employees' contribution paid before the due date should have been allowed. The learned CIT (A) following the decision of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd (143 taxmann.com 178) upheld the disallowance and dismissed the appeal of the assessee was dismissed. The assessee is in appeal before us.
06. The claim of the assessee is that ₹33,02,620/- out of sum of ₹35,61,884/- has been paid within due date prescribed under the Provident Fund and Employees State Insurance Act and sum of ₹2,59,264/- though paid beyond the due date

prescribed under the respective Act has been paid before the due date of filing of the return of income. The assessee referred to Annexure 12(a) of the tax audit report submitting the details of such payment and also enclosing the challans for the same. He therefore, submitted that even the tax audit report also shows that the above sum is not disallowable. It was further claim of the assessee that the case of the assessee may transfer to Coimbatore during the course of appellate proceedings and assessee did not get any time to represent the case properly before the learned Commissioner of Income-tax (Appeals).

07. The learned Departmental Representative submitted that when in the tax audit report assessee has mentioned that the payments are beyond the due dates there is no infirmity in the order of the lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. The only issue involves in this case is that whether the sum paid by the assessee as employees' contribution to provident fund and ESIC fee paid within the due date of respective Act, same is not disallowable and if those are deposited beyond those due dates, same are disallowable. The decision of the Hon'ble Supreme Court in case of Check mate services (supra), squarely covers the issue on this aspect. However the claim before us is that out of the sum of ₹35,61,884/-, the assessee has deposited ₹33,02,620/- within due date prescribed under the provident fund employees state insurance Act which is also shown as per annexure 12(a) of the Act, those are not disallowable. Therefore in the interest of justice, the assessee is given one more opportunity to demonstrate before the learned Assessing Officer that it has



deposited the sum before respective due date prescribed under the respective Act. The learned Assessing Officer may examine the claim of the assessee and decide the issue in accordance with the decision of the Hon'ble Supreme Court in case of Checkmate Services (supra) and if deposit of employees' contribution is within due date prescribed under respective law, same should be allowed. Accordingly, ground no.2 of the appeal of the assessee is restored back to the file of the learned Assessing Officer with above direction.

09. Accordingly, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.07.2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.07.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai