

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1365/KOL/2023
Assessment Year: 2019-2020**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-2, Durgapur,
Aayakar Bhawan Annexe,
City Centre, Durgapur-713216, W.B.***

-Vs.-

***Shibdas Sen,.....Respondent
Durgapur,
3A/31C, Sree Nagar Pally,
Benachity, Durgapur,
Burdwan-713213, West Bengal
[PAN: AMPPS3639C]***

Appearances by:

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf
of the Revenue*

No n e, appeared on behalf of the assessee

Date of concluding the hearing : August 08, 2024

Date of pronouncing the order : August 08, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

In this appeal, Revenue has challenged the order of Id.
Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi dated 2nd August, 2022 passed for Assessment Year 2019-20.

2. This appeal has been presented in the Tribunal on 12.12.2023. It is time barred by 436 days. The Revenue has filed an application for condonation of delay along with the affidavit of Shri Sudip Chatterjee. Without looking into all these aspects, we are of the view that otherwise this appeal is not maintainable because the ld. CIT(Appeals) has deleted the addition of Rs.7,22,174/-, which was claimed by the assessee as contributions towards PF and ESI. The stand of the Revenue is that in view of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178, this deduction was not admissible to the assessee. The tax effect on the total alleged addition of Rs.7,22,174/- is Rs.2,81,728/-. The CBDT vide its Circular No. 17 of 2019 issued on 8th August, 2019 has prohibited its field staff from challenging any order of the ld. CIT(Appeals) before the Tribunal where tax effect by virtue of relief given by the ld. CIT(Appeals) is less than Rs.50 lakhs. Here the question of merit cannot be agitated. The only question is whether the quantum of relief given by the ld. CIT(Appeals) is less than Rs.50 lakhs or not. The issue might be covered in favour of the Revenue but all these issues have been considered by Board's Circular while laying guidelines for not challenging the order of ld. CIT(Appeals) on merit because Board must be of the view that cost of litigation

is more than the recovery of taxes. The order of the Id. CIT(Appeals) could only be challenged if relief granted by the Id. 1st Appellate Authority does fall within the exemptions provided at Serial No. 10 of the Board Circular. In this exemption, no such item is being provided, that if disallowance out of non-payment of PF & ESI within the time limit is deleted by the Id. CIT(Appeals) would be challenged on merit before the Tribunal. Since the issue does not fall within the exemption clause, therefore, in view of the Circular, the Revenue cannot challenge the order of Id. CIT(Appeals) on merit. On due consideration of that fact, there is no need to consider the plea, whether the delay is to be condoned or not because, it failed to cross the threshold issue of maintainability of appeal otherwise in view of the CBDT Circular.

3. In view of the above discussion, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 08/08/2024.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 8th day of August, 2024

*Copies to :(1) Deputy Commissioner of Income Tax,
Circle-2, Durgapur,
Aayakar Bhawan Annexe,
City Centre, Durgapur-713216, W.B.*

- (2) *Shibdas Sen,
Durgapur,
3A/31C, Sree Nagar Pally,
Benachity, Durgapur,
Burdwan-713213, West Bengal*
- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*
- (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.