

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.922/Ahd/2023
(Assessment Year: 2017-18)

Adhaan Solution Pvt. Ltd., A-807, Dev Aurum, Showroom Officers, Annadnagar Cross Road, Prahladnagar, Gujarat-380015	Vs.	Assistant Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad
[PAN No.AAICA5878R]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Bhavna Udernani & Shri Rahul Y Oza, A.Rs.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR

Date of Hearing	08.08.2024
Date of Pronouncement	08.08.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi under Section 250 of the Act, vide order dated 21.08.2023, for Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeal:

“1. The order dated 21.08.2023 bearing no. ITBA/NFAC/S/250/2023-24/1055285934(1) by the CIT(A), National Faceless Appeal Centre, Delhi is arbitrary, against natural justice, unlawful, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.

2. On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs. 3,73,04,580/- on account of payment of Employee Contribution to the provident fund and ESI after the due date.

3. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal.”

3. The assessee is engaged in the business of providing management recruitment services. The assessee filed return of income for AY 2017-18 on 30.10.2017, declaring a total income of Rs. 13,59,700/-. Thereafter the assessee filed revised return of income on 08.08.2018, declaring a total income of Rs. 14,35,120/-. The case of the assessee was selected for scrutiny, and notices under Sections 143(2) and 142(1) of the Income Tax Act were issued. After considering the replies submitted by the assessee, the AO passed an order under Section 143(3) on 14.12.2019, making the addition of Rs. 3,73,04,580/- under Section 36(1)(va) for delayed payment of employees' contributions to PF and ESIC.

4. In appeal, Ld. CIT(Appeals) observed that the AO disallowed the contributions, amounting to Rs. 3,73,04,580/-, because they were deposited after the due date specified under the relevant Statute. The assessee argued that the delay in depositing the contributions was minimal and due to reasons beyond their control, such as public holidays and technical glitches and also in some cases there was no delay at all, but there was misreporting in the Audit Report. The assessee also highlighted that a substantial portion of the contributions was made on time and requested the disallowance be reconsidered. The Commissioner of Income Tax (Appeals) examined the case and upheld the AO's order, by observing that the due dates mentioned in sections 36(1)(va) and 43B are distinct. Ld. CIT(Appeals) observed that the appeal centered on whether the contributions, although made after the due date under the respective Acts but before the filing of the tax return, should be allowed as deductions. The CIT(A) reiterated that as per the Income Tax Act, deductions for employee contributions to PF and ESIC can only be claimed if deposited on or before the due date prescribed under the relevant Statute.

Accordingly, Ld. CIT(Appeals) held that in view of the judgments in the case of Checkmate (Supreme Court), the addition made by the AO in respect of disallowance u/s. 36(1)(va) is liable to be sustained and accordingly the decision of the AO was upheld.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) confirming the additions made by the assessing officer under section 36(1)(va) of the Act. The assessee has challenged the addition of Rs. 3,73,04,580/- made by the Assessing Officer (AO) under Section 36(1)(va) of the Income Tax Act, with regards to late deposit of Employee's Contribution to PF/ESI. Before us, the counsel for the assessee submitted that he is not in appeal before us in respect of those additions confirmed by Ld. CIT(Appeals) for delay in deposit of PF/ESI which admittedly were deposited beyond the due dates stipulated under the respective Act and neither is the assessee challenging the applicability of Checkmate decision to the assessee's set of facts. Therefore, the counsel for the assessee submitted that he is also not disputing the applicability of the decision of Hon'ble Supreme Court in the case of Checkmate (supra), on which reliance was placed by Ld. CIT(Appeals), while confirming the additions in hands of the assessee. However, the counsel for the assessee has submitted before us that there are certain apparent misreporting in the audit report and submitted that as per Annexure "E" of Tax Audit Report, column 20 (b), the tax auditor has taken a consolidated date for payment of ESI/PF, as opposed to as many as over 700 separate challans, which were submitted by the assessee, for the impugned year under consideration, towards payment of ESI/PF. This addition confirmed by Ld. CIT(Appeals) was based on figures reported by the Auditor in the tax audit report (Form 3CA-CD) without the AO independently verifying the data

submitted by the assessee. Before CIT(A), the assessee had submitted various documents, including a detailed table, pivot chart, and copies of challans, to demonstrate the actual due dates and payment dates for the PF/ESI contributions and that payments in large number of cases were within the timelines stipulated under the respective Act. These documents were aimed at demonstrating that the disallowance should be restricted to Rs. 47,59,430/- instead of Rs. 3,73,04,580/-. The CIT(A) failed to verify these submissions and data submitted by the assessee and simply relied on the Audit Report and observations made by the Ld. Assessing Officer in the assessment order. The Ld. Counsel for the assessee further submitted before us that even for assessment year 2016-2017, similar additions were made by the assessing officer due to misreporting in the tax audit report, however, on appreciation of evidence produced by the assessee during the course of appellate proceedings, Ld. CIT(Appeals) had granted substantial relief to the assessee. The counsel for the assessee also produced before us order passed by Ld. CIT(Appeals) for assessment year 2016-17, wherein on similar facts, substantial relief was granted by the Ld. CIT(Appeals). Further, the counsel for the assessee also submitted before us that the assessee also did not get a proper opportunity of representation before Ld. CIT(Appeals) owing to Covid period, which fell during the course of appellate proceedings. Accordingly, the counsel for the assessee requested that the matter may be restored to the file of Ld. CIT(Appeals), so as to enable him to analyse the detailed charts submitted by the assessee, from perusal of which, it would become clear that only a sum of Rs. 47,59,430/- was deposited by the assessee beyond the due stipulated date and therefore, only the aforesaid amount of Rs. 47,59,430/- is liable to be disallowed in the hands of the assessee.

6. In response, DR placed reliance on the observations made by the assessing officer and Ld. CIT(Appeals), in their respective orders.

7. We have heard the rival contentions and perused the material on record. The contention of the counsel for the assessee before us is primarily that the addition has been made on the basis of certain misreportings by the Auditor, in the Audit Report. The assessee had given a separate chart giving details of over 700 Challans with respect to PF/ESI payment, in order to demonstrate that most of the deposits had been made by the assessee within the due stipulated date, however, the detailed information/data submitted by the assessee was omitted to be considered by the Tax Authorities. Further, the counsel for the assessee submitted that since part of the hearing before Ld. CIT(Appeals) was falling within the Covid period, the assessee did not get adequate opportunity to present its facts before Ld. CIT(Appeals), for his consideration. Thirdly, the counsel for the assessee submitted that similar additions with respect to assessment year 2016-17 had also been made by the assessing officer owing to misreporting in the Audit Report, however, Ld. CIT(Appeals) on appreciation of detailed evidence filed by the assessee during the course of appellate proceedings had given substantial relief to the assessee on this issue. Finally, the counsel for the assessee submitted that if given an opportunity before Ld. CIT(Appeals), he is in a position to demonstrate that out of the total additions amounting to ₹ 3,73,04,580/- made by the assessing officer, only a sum of ₹ 47, 59,430/- has been deposited beyond the due stipulated date and hence the addition is liable to be restricted only to the aforesaid amount. Accordingly, the counsel for the assessee had submitted before us that in the event the matter is restored to the file of Ld. CIT(Appeals), he would be in a position to file a detailed written submissions on this issue for his consideration.

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8. Looking into the totality of facts placed before us and the arguments of the counsel for the assessee, in interest of justice, we are hereby restoring the case to the file of Ld. CIT(Appeals) for de novo consideration, and thereafter pass order in accordance with law, after taking into consideration the supporting evidences filed by the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 08/08/2024 and reduced to writing signed on 13.08.2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated 13/08/2024

TANMAY, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad