

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

I.T.A. No.753/KOL/2024

Assessment Year: 2021-22

Manojit Choudhury
(PAN: ACNPC9990L)

.... Appellant

Vs.

Asst. Director of Income Tax
Bengaluru.

.... Respondent

(Jurisdictional AO, ITO, Ward-30(1), Kolkata)

Appearances by:

Shri S. S. Gupta, FCA appeared for Appellant.

Shri B. K. Singh, JCIT appeared for Respondent.

Date of concluding the hearing : 18.07.2024

Date of pronouncing the order : 14.08.2024

ORDER

This appeal filed by the assessee pertaining to Assessment Year (in short “AY”) 2021-22 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeal), Addl/JCIT(A)-2, Gurugram [in short Ld. “CIT(A)”] dated 23.02.2024 arising out of the intimation u/s 143(1) of the Act by Asst. Director of Income Tax, CPC, Income Tax Department, Bengaluru dated 21.11.2022.

2. Sole grievance relates to disallowance made u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act for delay in deposit of PF/ESI of Rs.23,63,731/-.

3. At the outset, Ld. Counsel for the assessee referring to the paper book submitted that the issue needs to be restored to the file of the AO on account of two reasons. Firstly, there is a mistake in the audit report to the effect that certain amount of employer's contribution to PF & ESI has inadvertently been included in the alleged sum by the auditor and after necessary verification the portion of employer's contribution if found to be deposited before the due date of furnishing return of income then the disallowance made for the same may be deleted. Secondly, certain due dates for depositing the PF & ESI were falling during the lock down period when the country was passing through Covid pandemic. A circular dated 01.01.2021 issued by Employees State Insurance Corporation and dated 15.05.2020 for Employees Provident Fund Organisation refers to certain period during Covid 19 restriction for which the due date was extended. Ld. AO can examine the same and if the case of the assessee is covered by the said circular referred (supra) then necessary relief may be granted.

4. On the other hand, Ld. DR did not raise any serious objection.

5. We have heard rival contentions and perused the material placed before us. The only issue before me is the disallowance u/s. 36(1)(va) of the Act at Rs.23,63,731/-. I on going through the submission made by the Ld. Counsel for the assessee referred (supra) find sufficient merit and there being no opposition by the Ld. DR restore the issue to the file of the AO for necessary verification after considering the revised audit report and if found

that employer's contribution is wrongly included in the alleged sum then necessary relief may be granted to assessee in accordance with law and secondly the AO should also examine the due dates of deposit of employees contribution to PF & ESI falling in the period mentioned in the circular issued by ESIC on 01.01.2021 and EPFO on 15.05.2020 and if they fall in that period and if alleged sum is deposited within the extended due date then also necessary relief be granted to assessee. Needless to say that assessee should be given reasonable opportunity of being heard and assessee is also directed not to take unnecessary adjournment unless otherwise required for reasonable cause.

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

Order is pronounced in the open court on 14th August, 2024.

Sd/-[Dr. Manish Borad]
Accountant Member

Dated: 14th August, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. Appellant – **Shri Manojit Choudhury, Shroddha Apartment, Flat 1C, S. N. Roy Road, Sahapur, S.O. Kolkata-700038.**
2. Respondent – ADIT, CPC, Bengaluru (jurisdictional AO ITO, Ward-30(1), Kolkata).
3. CIT(A), Addl/JCIT(A)-2, Gurugram
4. CIT-
5. Departmental Representative
True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata