

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.1567/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2019-2020)

Shriram Fortune Solutions Limited,
123, Angappa Naciken Street,
Chennai 600 001.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 3(1)
Chennai.

[PAN: AAACS 7708N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Sivaraman, Advocate
: Ms. Kavitha, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 26.08.2024

घोषणा की तारीख /Date of Pronouncement

: 28.08.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Addl/JCIT(A)-10, Office of the Commissioner of Income Tax (Appeals)-10, Mumbai in Order No.ITBA/APL/S/250/2023-24/1063582897 (1) dated 28.03.2024 for assessment year 2019-2020.

2. Brief facts of the case are that the appellant had filed its return of income for A.Y. 2019-20 on 31.10.2019 declaring total income at Rs.53,02,850/-. The same

was processed by CPC, Bangalore on 29.07.2020 u/s 143(1) of the Act determining the total income of the appellant at Rs.2,46,59,630/- after making addition of Rs. 1,93,56,775/- u/s 36(1) (va) of the Act on account of disallowance of delayed payments of employees' contribution towards provident fund and ESI. Against the aforesaid addition, the assessee challenged the order dated 29.07.2020 while processing u/s 143(1) of the Act before the Id.CIT(A). Before the Id.CIT(A), the appellant submitted that the chartered account in his auditor's certificate has certified the payment of PF & ESI of Rs. 1,93,56,775/- and requested to delete the said addition. However, the Id.CIT(A) observed that in clause 20(b) of tax audit report was duly certified by the auditor that employees' contribution towards provident fund and ESI of Rs. 1,93,56,775/- are not paid by the appellant. He also notes that in appellant's case, no such revised Tax Audit Report has been validly e-filed till date. Hence, he further holds that submission of additional details/documents in support of such claim cannot be admitted since it is outside the scope of section 143(1). Therefore, the addition of Rs.1,93,56,775/- u/s 36(1)(va) in the order u/s 143(1) on account of disallowance of delayed payments of employees' contribution towards provident fund and ESI and consequently not allowing set off of current year loss of Rs.56,82,084/- against income from other sources in the order u/s 143(1) of the Act on the basis of the validly e-filed Tax Audit Report is found to be consistent with facts on record and in accordance with law and hence the Id. CIT(A) confirmed the action of the Id. Assessing Officer. Aggrieved, assessee preferred an appeal before us.

3. Before us, the Id.Counsel Mr. R. Sivaraman, Advocate filed Form No.3CA and 3CD, Auditor's certificate (Annexure-1), Chart showing details of PF remitted to the Government Account for the Financial year 2018-19, Chart showing details of ESI remitted to the Government Account for the Financial year 2018-19, summary of PF remittance FY 2018-19, Copy of Challans (i.e; all TRRN details-12 in numbers) and comprehensive submissions dated 13.09.2023 and 31.01.2024 filed before Addl/Joint Commissioner of Income Tax (Appeals-10), Mumbai. The Id.DR, Ms. Kavitha, IRS, Addl. CIT vehemently supported the impugned order and prayed for the dismissal of appeal.

4. We heard both sides and perused the orders of lower authorities. We have also gone through the paper book filed by the assessee. Further, having gone through the entire materials on record specifically Form 3CD at Sr.No.20b we find that sum received from employees, due date for payment and **the actual date of payment to the concerned authorities** are find mentioned therein. We also find that before '**the actual date of payment to the concerned authorities**', the actual amounts paid are shown as '0' in respective column. We find and consider this reporting as inadvertent error for the reason that after this column payments dates are find mentioned in the next column as actual date of payment to the concerned authorities. When actual dates of payment are very much reported in Form 3CD, it could be treated as inadvertent error. Apart from the above reasoning other clinching evidence filed are auditor's certificate certifying inadvertent error crept in the report, PF chart, ESI chart, challans showing payment made. Even

original 3CD report has been rectified in respect of payment of PF and ESI contributions. The Hon'ble Supreme Court in the case of Price Water Coopers (P) Ltd. vs CIT 348 ITR 306 (SC) wherein it has been held that no penalty is leviable in case of an inadvertent error committed in the computation of income. The Hon'ble Supreme Court considering the totality of the fact of that case held that even the assessee could make "silly" mistakes. The Hon'ble Supreme Court observed that the contents of the tax audit report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It was noted that all that has happened in the present case is that through a bonafide and inadvertent error the assessee while submitting its return failed to add the provision for gratuity to its total income. This can only be described as a human error which are prone to make. The Hon'ble Supreme Court held further that the caliber and expertise of the assessee has little or nothing to do with the inadvertent error. It was observed that the assessee should have been careful cannot be doubted but the absence of due care in cases such as the present does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income. Similarly, in the case of Baroque Pharmaceuticals (P.) Ltd. [2022] 137 taxmann. com 94 (Gujarat) it is held by the Hon'ble Court that reopening notice merely relying on a technical mistake committed by an auditor was unjustified.

5. Therefore, in the light of above conspectus of matter and taking guidance from the judgments referred supra, we treat such reporting at Sr.No.20b as '0' in

Form 3CD as inadvertent error / human error. To err is human nature. No one is infallible. Further, to perpetuate an error is no heroism when apparent error is shown. We are also of the considered opinion that assessee has made the actual payment of PF and ESI contribution as received from the employees well within time. On merits there is no quarrel except technical or venial breach has occurred while filling up column. Therefore, we direct the Id.AO to delete addition on this count and re-compute the income considering other relief prayed such as set off of current year loss as per law.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28th day of August, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 28-08-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF