

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 261/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2019-2020

Adani Ennore Container Terminal Private Limited, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad-380009. PAN: AAMCA4312N	बनाम Vs.	CPC Banglore, Present Jurisdiction D.C.I.T, Circle-1(1)(1), Ahmedabad.
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(अपीलार्थी /Appellant)	(प्रत्यर्थी /Respondent)
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Assessee by :	Shri Dhrunal Bhatt, AR
Revenue by :	Shri Ramesh Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 12/08/2024

घोषणा की तारीख /Date of Pronouncement: 03/09/2024

आदेश/ORDER

PER SUCHITRA KAMBLE, JM:

The captioned appeal has been filed at the instance of the Assessee against the order dated 23/02/2023 passed by the National Faceless Appeal Centre(NFAC)/CIT(A), arising in the matter of assessment order passed under s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2019-20.

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

1. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) has failed to appreciate that the payment of contribution to NPS was not falling within the purview of Section-143(1)(a) of the Act and accordingly the adjustment made by the CPC Authority was beyond the scope of provisions of Section-143(1)(a).

2. In law and in the facts and circumstances of the appellant's case, the Ld. CIT (A) has erred in upholding the adjustment of Rs. 8,14,338/- made by the Assessing Officer in the intimation under Section- 143(1)(a).

2.1 The Ld. CIT (A) has failed to appreciate the fact that as per the details given in Tax Audit Report, the payments to NPS were made before the due date and therefore, there was no justification for making the adjustment.

2.2 The Ld. CIT (A) has further failed to appreciate that there is no date prescribed by the NPS Authorities for payments of contribution to NPS and that, therefore, there was no justification for holding that the payments was made beyond the due date. Accordingly, the adjustment made by the CPC Authority was not justified.

2.3 The Hon'ble ITAT accordingly may please direct for deleting the adjustment made to the total income in the intimation under Section 143(1)(a).

3. The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground either before or at the time of appeal hearing.

3. The assessee is a company and filed its return of income declaring the total income of Rs.3,65,571/- for the Assessment Year 2019-20. The return was processed u/s. 143(1) of the Income Tax Act 1961 and the assessee's total income was assessed at Rs.10,79,909/- after making an adjustment of Rs.8,14,338/- due to the fact that the contribution of EPF/ESI of the Employees Contribution was deposited beyond the due date of respective acts.

4. Being aggrieved by the Assessment Order, the assessee is in appeal before the Ld.CIT(A). The Ld.CIT(A) dismissed the appeal of the assessee.

5. The Ld.AR submitted that the payment of contribution to National Pension Scheme(NPS) was not falling within the purview of section 143(1)(a) of the Act and accordingly the adjustment made by the CPC, Authority was beyond the scope of provision of section 143(1)(a) of the Act. The Ld.AR further submitted that as per the details given in Tax Audit Report the payment to NPS was made before the due date and therefore there was no justification for making the adjustment. The Ld.AR also submitted that the identical matter following in the case of group company of the assessee in Adani Hazira Port Limited in ITA No.25/Ahd/2023 order dated 30/07/2024 for AY 2019-20 wherein the amount of Rs.29,85,610/- in respect of said National Pension Scheme (NPS) contribution was deleted by the Tribunal.

6. The Ld.DR relied upon the assessment order and the order of the Ld.CIT(A).

7. Heard both the parties and perused the relevant materials available on records. It is pertinent to note that the issue involved in the present appeal relates to the contribution namely National Pension Scheme(NPS) which is regulated by Development Authority as wells as PFRDA Act, 2013 and there is no due date prescribed under the Act and therefore that cannot be equated with Employees Provident Fund and Miscellaneous Provisions Act, 1952. The issue is already decided by the Tribunal in the assessee's group company as pointed out by Ld.AR at the time of hearing. The relevant extract of decision is reproduced as under:

"...8. We have given our thoughtful consideration and perused the materials available on record. It is seen from the Return of Income, the assessee made deposit

of Rs.29,85,610/ being Employees contribution under any "other welfare fund" namely National Pension System (NPS). On perusal of the Tax audit report, it is seen that the contribution is made under NPS before due date of filing Return of Income. NPS is regulated by Pension Fund Regulatory and Development Authority and PFRDA Act, 2013. There is no due date prescribed by the PFRDA as to when the payment is required to be made to the NPS account. Further section 12[3][iii] of the PFRDA Act, 2013 clearly prohibits the provisions of this Act shall not apply to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus the impugned adjustment made on the payment under NPS by CPC is not justified as there is no due date prescribed in the respective PFRDA Act, 2013 and all the payment has been duly made before filing of the Return of Income as per section 139[1] of the Act. Therefore the amount of Rs.29,85,610/- is treated to be allowable u/s.43B[b] of the Act and therefore the addition made by CPC is liable to be deleted. Further we observe when the assessee had replied to the communication to the CPC and explaining the above facts, CPC is not correct in ignoring the reply and making the disallowance in the 143[1] proceedings. Thus the Grounds of Appeal raised by the assessee are hereby allowed.

8. *In the result, the appeal filed by the assessee is allowed..."*

8. The Ld.DR could not point out any factual discrepancies in the present assessee's appeal to that of the group company of the assessee. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 03rd September, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

(True Copy)

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/09/2024

Manish, Sr. PS