

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1621/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

M/s.Bharat Textiles & Proofing – Industries Ltd., New No.64, Old No.43, Sattana Naicken Street, Choolai, Chennai-600 112.	v.	The ITO, Corporate Ward-1(2), Chennai.
[PAN: AAACB 2540 D]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Bhoopathi, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	24.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.09.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals)/Addl./JCIT (A)-2, (hereinafter in short "the Ld.CIT(A)"), Ludhiana, dated 30.03.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. Grounds of appeal raised by the assessee are as under:

1. The order of the learned Commissioner Of Income Tax (Appeals)-2, Ludhiana, is wrong, illegal and is opposed to law.

2. The learned Assessing Office erred in making the following additions:



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Sl.No.	Particular	Amount
A	Late payment of Employee's contribution towards Provident Fund	Rs 6,29,606/-
B	Late payment of Employee's contribution towards Employee State Insurance	Rs 91,409/-
A + B		Rs 7,21,015/-
C	Interest on late payment of PF & ESI	Rs 73,384/-
A+B+C	Total Disallowance by the AO	Rs 7,94,399/-

3. The assessee while filing the return of income has added late payment of Employee's contribution towards Provident Fund of Rs 6,29,606/- and late payment of Employee's contribution towards Employee State Insurance of Rs.91,409/-.

4. Hence, addition made by the A.O. towards late payment of PF & ESI amounts to double disallowance of same expenses.

5. With regard to disallowance of Rs 73,384/- towards interest on late payment of PF & ESI, the learned CIT(A) should have considered the judgement passed by the Hon'ble Supreme Court, in the case of Prakash Cotton Mills P.Ltd. Vs CIT and Swadeshi Cotton Mills Co Ltd Vs CIT, wherein it has been held that interest on late payment of PF & ESI is compensatory in nature and hence, it should be allowed u/s 37 (1).

6. (i) The learned CIT(A) in her order has stated that the assessee has disallowed the same amount of Rs 7,21,015/- in PART A of OI at Sr.No 11(b) u/s.43B which relates to Employer's contribution towards Provident Fund & ESI.

(ii) The assessee has already disallowed late payment of Employee's contribution of PF & ESI amounting to Rs.7,21,015/ in the return of income. However, in the return of income, it was wrongly mentioned the disallowance in the place of late payment of employer's contribution, due to oversight.

(iii) The assessee has paid employer's contribution of PF and ESI within due date (i.e. before due date of filing the return).

For these and other grounds that may be adduced at the time of hearing, it is humbly prayed that the Hon'ble Tribunal may delete the addition of Rs 7,94,399/- and render justice.

3. The brief facts are that the assessee company filed its return of income for AY 2017-18 on 29.09.2017 admitting total income of Rs.NIL. Later, the case was selected for scrutiny. The AO noted that the assessee has not remitted the employees' Provident Fund/ESI before the due date to the tune of Rs.7,21,015/-. Therefore, he disallowed the same



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u/s.36(1)(va) of the Income Tax Act, 1961 (hereinafter in short "the Act") and added the same to total income of the assessee. And also added Rs.73,384/- which was the interest remitted on late payment of Provident Fund/ESI.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) and pointed out to him that it had already disallowed Rs.6,29,606/- towards late payment of Provident Fund and Rs.91,409/- towards late payment of employee's contribution towards ESI (total Rs.7,21,015/-) and that thus assessee has *suo-moto* disallowed Rs.7,21,015/- while filing the ITR for AY 2017-18. However, the AO has again disallowed Rs.7,21,015/- to the total income of the assessee which tantamounts to double addition. However, the Ld.CIT(A) has brushed aside the said contention only on the ground that ITR reveals that disallowance was made u/s.43B of the Act of Rs.7,21,015/- which relates to employer's contribution towards PF/ESI and not for late deposit of employee's contribution to PF/ESI. Therefore, he upheld the action of the AO disallowing Rs.7,21,015/- u/s.36(1)(va) of the Act.

5. We don't countenance the impugned action of the Ld.CIT(A) for the simple reason that assessee's assertion that due to an inadvertent mistake on the part of the assessee to have wrongly mentioned in the ITR/column in ITR, the *suo-motto* disallowance made by assessee as



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noted supra cannot be ignored viz the suo-moto disallowance reflected in column meant for late payment of employer's contribution, whereas, it ought to have been filled correctly in the column meant for late payment of employees' contribution, necessarily gives rise to a question of fact, which question has not been answered or verified, by the Ld.CIT(A). Therefore, the assessee's assertion that disallowance/addition was not warranted has not been examined by the Ld.CIT(A). It was brought to our notice that the assessee has paid employer's contribution of PF & ESI within due date (i.e. before the due date of filing of return). In such a scenario, hyper technicality ought not to have been resorted to by the First Appellate Authority for sustaining the impugned addition. It should be borne in mind that as per Article 265 of Constitution of India "*no tax shall be levied or collected except by authority of law*".

6. It is noted that due to inadvertent mistake on the part of the assessee while filling up the ITR wrongly reflected that Rs.7,21,015/- was disallowed by it suo-moto u/s.43B (i.e. relating to employer's contribution of PF & ESI rather than disallowing suo-moto Rs.7,21,015/- u/s.36(1)(va) of the Act) can't be ground to again add it. It should be borne in mind that Ld.CIT(A) is a quasi-judicial authority who is expected to act in a fair manner while dispensing justice. By passing the impugned order, the Ld.CIT(A) has made more or less a computerized approach to the case



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without giving any allowance to the human factor (typographical error in this case). Therefore, we set aside the impugned order of the Ld.CIT(A) and remit it back to the file of the AO for limited purpose to firstly verify whether the assessee's assertion that it has disallowed Rs.7,21,015/- u/s.36(1)(va) of the Act but mistakenly mentioned it in the ITR as u/s.43B; and if it is found that assessee's assertion is correct i.e. the assessee has remitted the employer's contribution of PF/ESI before the due date of filing of return of income, and consequently, there was no occasion for assessee to disallow the same u/s.43B of the Act, then the AO to proceed to see whether the suo-motto disallowance made by assessee was indeed u/s.36(1)(va) of the Act, since there was delay in remitting the employee's contribution towards PF/ESI; and if it is found that the assessee has disallowed the same u/s.36(1)(va) of the Act, but mistakenly shown to be u/s.43B of the Act, then in such a case, no disallowance is warranted and the AO to carry out this exercise and pass order accordingly after hearing the assessee.

7. Regarding the disallowance of interest payment of Rs.73,384/- made towards late payment of PF & ESI, we find no merit in the contention of the assessee that the interest payments on this account were compensatory in nature and hence allowable u/s.36(1)(va) of the Act. For that we rely on the decision of the Hon'ble Supreme Court in the



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case of Prakash Cotton Mills Pvt. Ltd. v. CIT reported [1993] 201 ITR 684 (SC) wherein the Hon'ble Andhra Pradesh High Court's decision in the case of CIT v. Hyderabad Allwyn Metal Works Ltd. reported in [1988] 172 ITR 113 (AP-HC) was concurred to. It is noted that the Hon'ble Supreme Court in Prakash Cotton Mills Pvt. Ltd. supra concurred with the view of the Division Bench of the Hon'ble Andhra Pradesh High Court, while answering the questions raised in that case i.e., whether the damages paid by that assessee u/s.14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was an allowable deduction u/s.37(1) of the Act and whether the interest under the BST Act for delayed payment of sales tax was an allowable deduction u/s.37(1) of the Act and noted that the Hon'ble Andhra Pradesh High Court has held in favour of the Revenue, which ratio was concurred by the Hon'ble Supreme Court. Therefore, we uphold the action of the Ld.CIT(A) and dismiss this grounds of appeal of the assessee.

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

Order pronounced on the 18th day of September, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,
दिनांक/Dated: 18th September, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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