

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.1521/Kol/2024**  
**Assessment Year: 2020-21**

**Premier Irrigation Adritee Pvt. Ltd. ....Appellant**  
**17/1C, Alipore Road, Niharika,**  
**Kolkata-700027.**  
**[PAN: AAFCM4800Q]**

**vs.**

**DCIT, Circle-11(1), Kolkata..... Respondent**

**Appearances by:**

Shri A. K. Tibrewal, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 25, 2024

Date of pronouncing the order : September 25, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 09.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

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

*"1. That the impugned order passed by Ld. Commissioner of Income Tax (Appeals), NFAC summarily dismissing the appeal of the Appellant Assessee Company for alleged non-compliance of the Notices is against law and facts of the case since he did not adjudicate each of the Grounds of Appeal the facts for which were available to him in the Assessment Order passed by Ld. Assessing Officer and the Statement of Facts filed by the Appellant Assessee.*

*2. That the impugned order passed by Ld. Commissioner of Income Tax (Appeals) on 9h January 2024 dismissing the appeal of the Appellant*

*Assessee Company without allowing reasonable opportunity of hearing be set aside since the two notices of hearing issued on 11<sup>th</sup> August 2023 and 23<sup>rd</sup> November 2023 were not served on the Appellant.*

*3. That, on the facts and in the circumstances of the case, the impugned order stated to have been passed on 09.01.2024 was not in the knowledge of the Assessee as it had not received any communication in respect of the passing of the said order on 09.01.2024 as a result of which the said appeal is being filed belatedly.*

*4. That the Ld. CIT(A), NFAC erred in dismissing the Appeal of the Appellant Assessee Company thereby confirming the order passed by the Assessing Officer, wherein the total income was determined at Rs.35,41,68,666 as against the income of Rs. 23,07,24,870 although the disallowance made was only Rs.12,11,832 u/s 36(1)(va) of the Act. On the said disallowance of Rs.12,11,832, the Assessed income should have been only Rs.23,19,36,702/- .*

*5. That the Ld. CIT(A), NFAC erred in confirming the tax liability of Rs.5,01,74,947 as shown in the tax computation sheet calculated on the income of Rs.35,41,68,666 although the said sum of Rs.35,41,68,666 is not mentioned anywhere in the impugned assessment order as assessed income of the Appellant Assessee Company.*

*6. That the Ld. CIT(A), NFAC erred in confirming the addition of Rs.12,11,832 in the total income of the Appellant Company under section 36(1)(va) of the Income Tax Act, 1961, although admittedly such amount as deposited within the due date of furnishing the return of income prescribed under section 139(1) of the Act and as reported in the Tax Audit report under section 44AB of the Act.*

*7. That the Ld. CIT(A), NFAC erred in concurring with the action of the Assessing Officer in not giving full credit of TDS as claimed by the Appellant Company in the return of income filed under section 139(1) of the Act and reflected in the 26AS of the Appellant Company.*

*8. That the Ld. CITA), NFAC erred in confirming the action of the Assessing Officer in charging interest of Rs.12,98,116 under section 234A, Rs.1,52,58,261 under section 234B and Rs.38,08,616 under section 234C of the Act which is otherwise excessive and / or unreasonable.*

*9. That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”*

**3. Ground Nos.1 to 4 & 6 – So far as these grounds of appeal are concerned, the only issue raised by the assessee is relating to**

disallowance made by the Assessing Officer u/s 36(1)(va) on account of delayed deposit of employees' contribution to PF/ESI.

4. The ld. Counsel has fairly stated that the issue is covered by the recent verdict of the Hon'ble Supreme Court in 'Checkmate Services Pvt. Ltd. Vs. CIT' (2022) 143 taxmann.com 178 (SC) dated 12.10.2022 wherein, it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed even though deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act,1961.

5. In view of the above, Ground Nos.1 to 4 & 6 of the assessee are dismissed.

6. **Ground No.5** - So far as the Ground No.5 is concerned, the assessee has disputed an addition of Rs.35,41,68,666/- made by the Assessing Officer by adding back contingent liability.

7. The ld. AR has submitted that the assessee had not debited the said amount in the Profit & Loss A/c and therefore, there was no question of adding back the same. Even the Assessing Officer has not discussed this issue in the assessment order.

8. The ld. DR has, however, pointed out that the aforesaid addition was made u/s 143(1) of the Act, however, there is no reference of the said addition in the order passed u/s 143(3) of the Act. That the Assessing Officer has added back the said amount while computing total income of the assessee.

9. We have heard the rival submissions. The order passed u/s 143(1) gets merged with order passed u/s 143(3) of the Act. Though, the Assessing Officer has not given a specific finding regarding the addition

of the said amount but he has added back the same while computing the income of the assessee and therefore, the assessee, in our view, is justified in raising this ground before this Tribunal. The Hon'ble Supreme Court in the case of 'National Thermal Power Co. Ltd. v. CIT' reported in [1998] 229 ITR 383 (SC) has held that the issues which due to some inadvertence could not be raised before the Assessing Officer, that can be raised before this Tribunal. The ultimate purpose is to determine the correct tax liability of the assessee. Considering the above, we restore this issue to the file of the Assessing Officer to examine the contentions of the assessee and pass a speaking order on this issue on merits.

10. **Ground No.7** - The assessee vide this ground has contested that the Assessing Officer has not given full credit of TDS deposited on behalf of the assessee by the deductor. This issue is also restored to the file of the Assessing Officer to examine the claim of the assessee and give the credit of the TDS, which the assessee may be found entitled.

11. **Ground Nos.8 & 9** - Ground No.8 is consequential in nature and Ground No.9 does not need adjudication.

12. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

***Kolkata, the 25<sup>th</sup> September, 2024.***

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 25.09.2024.

RS

*Copy of the order forwarded to:*

1. Premier Irrigation Adritee Pvt. Ltd
2. DCIT, Circle-11(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches