



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.493/LKW/2024
Assessment Year: 2022-23

Neeta Tiwari A-6, South City Ambedkar University Road Lucknow	v.	The ITO-4(1) Lucknow - New
TAN/PAN:AFOPT6232J		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	08	10	2024
Date of pronouncement:	14	11	2024

ORDER

This appeal has been preferred by the assessee against the order dated 11.06.2024, passed by the Id. Addl/JCIT(A)-5, Delhi for Assessment Year 2022-23.

2. The brief facts of the case are that the assessee filed her return of income for the year under consideration on 11.10.2022, declaring a total income of Rs.24,75,960/-. The return was processed by the Central Processing Centre (CPC) under section 143(1) of the Income Tax Act, 1961 (hereinafter called "the Act"), assessing the total income of the assessee at Rs.44,27,790/- after making an addition of Rs.19,51,830/- by invoking the

provisions of section 36(1)(va) of the Act for late deposit of employees' contribution to PF and ESI.

3. Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority. The appeal was migrated to Addl/JCIT(A)-5, who dismissed the appeal of the assessee by passing an order ex-parte qua the assessee.

4. Now, the assessee has approached this Tribunal challenging the dismissal of its appeal by the Addl/JCIT(A)-5 by raising the following grounds of appeal:

1.1 BECAUSE the Id. "CIT(A)" was not justified in dismissing the appeal by passing the impugned order ex-parte on 11.06.2024 before the date of hearing fixed on 18.06.2024 (as per notice of hearing dated 11.06.2024) and consequently the impugned order deserves to be set-aside and the matter restored to "CIT(A)" for passing the order afresh after affording due and effective opportunity of being heard to the assessee.

1.2 BECAUSE non-compliance of earlier notices of hearing issued by Id. "CIT(A)" occurred due to communication gap owing to death of the previous chartered accountant looking after the income tax matters of the assessee and on a due consideration of this fact also, the matter deserves to be restored to the Id. "CIT(A)" for deciding the appeal afresh after affording a reasonable opportunity of being heard to the "appellant".

WITHOUT PREJUDICE TO THE AFORESAID

2. BECAUSE the "CIT(A)" has erred in law and on facts in confirming the addition of Rs.19,51,825/- made by CPC in the intimation under section 143(1) of the Act on account of disallowance under section 36(1)(va) of the Income Tax, 1961 owing to late deposit of employees' contribution to PF and ESI.

3. BECAUSE the Ld. "CIT(A)", while confirming the addition of Rs.19,51,825/-, failed to appreciate that the disallowance on account of delay in deposit of Provident Fund and ESI contributions under section 36(1)(va) of the Income Tax Act, 1961 was not permissible while processing the return of income under section 143(1), as the same was beyond the scope of adjustments permissible under sub-clause clause (a) of the sub-section (1) of the section 143 of the Act.

4. BECAUSE in any case the authorities below have grossly erred in quantifying the amount of disallowance u/s 36(1) (va) of the Income-tax Act, 1961 at Rs.19,51,825/- whereas on a correct computation the disallowance, though not admitted, could not have exceeded Rs.9,21,544/-.

5. BECAUSE in confirming the disallowance u/s 36(1) (va) the reliance placed by the ld. "CIT(A)" 'on the decision of Apex Court in Checkmate Services Pvt. Ltd. vs. CIT reported in [2022] 448 ITR 518 (SC) is wholly misplaced as the facts of the said case are distinguishable from the facts of the present case.

6. BECAUSE the order appealed against is contrary to facts, law and the principles of natural justice.

7. BECAUSE each ground taken in appeal is mutually exclusive and without prejudice to each other.

8. BECAUSE the "appellant" craves leave, to add, delete or modify any of the grounds before hearing of appeal.

5. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted before me that the Addl/JCIT(A)-5 was not justified in passing the impugned ex-parte order dated 11.06.2024 prior to the date of hearing fixed for 18.06.2024, vide notice dated 11.06.2024 (Copy of the Notice dated 11.06.2024 is placed on record at pages 34 to 36 of the paper book). The Ld. A.R. further submitted that both the authorities below have erred also in quantifying the amount of disallowance under section 36(1)(va) of the Act, and that the addition made by the CPC and confirmed by the Addl/JCIT(A) under section 36(1)(va) of the Act is Rs.19,51,825/-, whereas the amount of disallowance under this head, if any, would not exceed Rs.9,21,544/- on a correct computation. He filed before me an application dated 07.10.2024 for admission of additional evidence in the form of statement showing computation of due date of payment of employees' contribution to PF/ESI, date of credit of the same to the relevant fund and quantification of contribution deposited after the due date (placed at pages 4 & 5 of the paper book), under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. In this regard, an affidavit duly sworn in by the assessee has also been filed before me, which is placed at pages 6 and 7 of the paper book.

The Ld. A.R. prayed that in the interest of the justice, the additional evidence may kindly be admitted, so that the appeal of the assessee can be disposed of in a right perspective.

6. The Ld. Sr. D.R. had no objection to the admission of the additional evidences.

7. Having gone through the additional evidences filed before me, I am of the view that these evidences go to the very root of the matter and are germane to proper determination/assessment in the case of the Assessee. Accordingly, I admit the same.

8. The Ld. A.R. further prayed that in the interest of natural justice, the matter may be restored back the file of the AO, where all the aforesaid additional evidences would be produced to prove the transactions entered into by the Assessee during the year under consideration.

9. The Ld. Senior D.R. had no objection to the restoration of appeal to the AO.

10. I have heard the ld. Senior Departmental Representative as well as the ld. AR and have also perused the material on record. Looking into the facts of this case, I am of the considered view that the Assessee deserves one more opportunity to present her case and, therefore, in the interest of substantial justice, I

restore this file to the Office of the AO with the direction to provide one more opportunity to the Assessee to present her case. I have already admitted the additional evidences filed by the Assessee in the form of statement showing computation of due date of payment of Employees' Contribution to PF/ESI, under Rule 29 of the I.T.A.T. Rules. The Assessee shall produce them before the AO during the course of set aside proceedings. I also caution the Assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the Assessee.

11. In the result, the appeal of the Assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 14/1/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:14/11/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order
Assistant Registrar