

**IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhanatpan**

**Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Balakrishnan, S. Accountant Member**

आ.अपी.सं / **ITA No.343/Viz/2024**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Alphatech Systems Guntur PAN:AAZFA7176Q (Appellant)	Vs.	Income Tax Officer Ward 2 (1) Guntur (Respondent)
निर्धारिती द्वारा/Assessee by: Ms Sandhya Samudrala, Adv		
राजस्व द्वारा/Revenue by: Dr. Aparna Villuri, Sr.DR		
सुनवाई की तारीख/Date of hearing:	28/11/2024	
घोषणा की तारीख/Pronouncement:	29/11/2024	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal filed by the assessee is directed against the order dated 31/07/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2021-22.

2. The assessee has raised the following grounds:

“1. The order of the CIT (A) is erroneous both on facts and in law.

2. The learned CIT (A) erred in confirming the addition made of Rs.86,904/- being late payment of PF & ESI when the

appellant in the computation has already disallowed the same.

3. The learned CIT (A) ought to have directed the Assessing Officer to delete the addition made of Rs.86,904/- when such disallowance was already made.

4. Any other ground that may be urged at the time of hearing”.

3. The learned AR of the assessee has submitted that the CPC while processing the return of income has made an addition of Rs.86,904/- on account of late payment of employees' contribution to PF & ESI whereas the assessee in the computation of income has already made suo motto disallowance of Rs.86,904/- on account of belated payment towards employees' contribution to PF & ESI. Thus, the learned AR has submitted that the disallowance made by the CPC while processing the return of income u/s 143(1) amounts to double addition. She has referred to the computation of income and pointed out that the assessee has added the said amount of Rs.86,904/- to the total income on account of belated payment towards employees' contribution to PF & ESI, however, mistakenly the provisions of section 43B were mentioned instead of section 36(1)(va) of the I.T. Act, 1961. Thus, she has pleaded that the double addition made by the CPC may be deleted.

4. The learned DR, on the other hand, relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material available on record. In the statement of income placed at Page 2 of the paper book, the assessee has suo motto disallowed Rs.86,904/- as under:

A. Y. 2021-2022			
Name	: ALPHATECH SYSTEMS	Previous Year	: 2020-2021
Address	: 154/B BESIDE DECCAN GODOWNS KANTHERU, TADIKONDA MANDAL, GUNTUR DISTRICT - 522 508	PAN	: AAZFA 7176 Q
		Status	: Partnership Firm
		D. O. F.	: 07-Apr-2014
Statement of Income			
		Rs.	Rs.
Profits and gains of Business or Profession			
<i>Business-1: Alphatech Systems, Kantheru, Guntur District</i>			
	Net Profit Before Tax as per P & L a/c		3,21,371
	Add: Inadmissible expenses & Income not included		
	Depreciation debited to P & L a/c	12,47,010	
	Interest and Remuneration to partners debited to P & L a/c	5,82,593	
	Other additions	4,328	
	43B disallowance	86,904	19,20,835
	<i>Adjusted Profit of Business-1</i>		<u>22,42,206</u>
	Total income of Business and Profession		22,42,206
	Less: Depreciation as per IT Act	8	<u>12,47,010</u>
	Book profit		9,95,196
	Less: Remuneration and Interest to partners	3	<u>5,82,593</u>
	<i>Income chargeable under the head "Business and Profession"</i>		<u>4,12,603</u>
Total income			<u>4,12,603</u>
	Total income rounded off u/s 288A		4,12,600
	<i>Tax on total income</i>		1,23,780
	Add: Cess		4,951
	Tax with cess		<u>1,28,731</u>
	Net Tax		1,28,731
	TDS	4	48,000
	Advance Tax	5	45,000
	Total prepaid taxes		<u>93,000</u>
	Balance Tax		35,731
	Interest u/s 234B		2,856
	Interest u/s 234C		4,074
	Net tax payable		<u>42,661</u>
	Self-assessment tax paid	6	43,000
Refund Due			<u>340</u>

5.1 The assessee raised this issue before the learned CIT (A) and specifically pointed out this fact in Para 11 of statement of facts reproduced in the impugned order at page No.4 as under:

11) The appellant has already disallowed contribution of employee for late payment of PF and ESI of Rs. 86,904.00 u/s 36 of the I.T. Act in computing the total income. The assessing officer has once again disallowed contribution of late payment of PF and ESI of Rs. 86,904/- both under section 36 of the I.T. Act and 43B of the I.T. Act in processing the return of income u/s 143(1) of the I.T. Act.

6. The learned CIT (A) without considering the aspect of double taxation of the said amount has simply dismissed the appeal of the assessee by following the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT [2022] 143 taxmann.com 278 (SC) held in Para 9.3.4 of his order as under:

9.3.4 Appellant has merely stated in its submission dated 04.07.2024 that no disallowance u/s 43B is warranted but has not provided copies of challans. A statement of the appellant cannot override reporting of an auditor. Further, reliance on the decision of the Hon'ble Supreme Court in the case of **CHECKMATE SERVICES P. LTD. Versus COMMISSIONER OF INCOME TAX-1**. The relevant extract of the decision of the Hon'ble Apex Court is as under:

"54. In the opinion of this Court, the reasoning in the impugned judgment that the nonobstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The nonobstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything

contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."

Therefore, for want of evidence of timely contribution made by employer and relying on reporting made in the audit report, I am inclined to confirm the impugned adjustments made in the order passed u/s 154 of the Act. Hence, Ground Nos.3, 4 and 6 , stand **dismissed**.

7. Once the assessee has brought on record this fact that the assessee has already made a suo motto disallowance on this account, then sustaining the disallowance/addition made by the CPC towards belated payment of employees' contribution to PF & ESI amounts to double taxation of the same income, then sustaining the addition by the learned CIT (A) which is highly arbitrary and unjustified. Accordingly, in view of the facts as discussed above, the addition made by the CPC and sustained by the learned CIT (A) is deleted. We may clarify that this disallowance attracts the provisions of section 36(1)(va) and not provisions of section 43(B) of the I.T. Act, 1961. Therefore, the assessee cannot claim on account of payment of employees' contribution in the subsequent year u/s 43B of the I.T. Act, 1961.

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

Order pronounced in the Open Court on 29th November, 2024.

Sd/-

Sd/-

(BALAKRISHNAN, S.) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
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Hyderabad, dated 29th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	ALPHATECH Systems, 154/B Beside Deccan Godowns, Kantheru Tadikonda Mandal, A.P 522508
2	Income Tax Officer Ward 2(1) Guntur
3	Pr. CIT – Guntur
4	DR, ITAT Vizakhapatnam Benches
5	Guard File

By Order