

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.317/Nag./2022
(Assessment Year : 2018-19)

Shilpa Steel And Power Ltd.
2, Surana Layout, Rajnagar
Nagpur 440 001 PAN – AABCS8627D

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2, Nagpur

..... Respondent

Assessee by : Shri Rajesh V. Loya
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 28/11/2024

Date of Order – 06/12/2024

ORDER

PER K.M. ROY, A.M.

This appeal by the assessee is against the impugned order dated 24/09/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2018-19.

2. In its appeal, the assessee has raised following grounds:-

"(1) That the Intimation Order of the learned Dy. Commissioner of Income Tax, CPC, Bangalore passed u/s. 143(1) is bad in law and wrong on facts and the learned CIT(A) erred in confirming the same.

(2) That the learned AO CPC erred in law and on facts in making addition of Rs.26,49,200/- on account of employees contribution to PF/ESIC Fund paid after the due date by invoking provisions of section 36(1)(va) r.w.s. 2(24)(x) and the learned CIT(A) erred in confirming the action of the AO. On the facts and circumstances of the case, the payment has been made before due date

of filing return of income u/s 139 and thus allowable. The action of the authorities is therefore highly unjustified and illegal.

(3) That the learned CIT(A) erred in law and on facts in confirming the action of learned AO by accepting the disallowance made by CPC merely through electronic processing u/s 143(1). On the facts and circumstances of the case, the disallowance on account of appellant's failure to pay the employee's contribution to Provident Fund/ ESIC within the prescribed due dates as per section 36(1)(va) is outside the purview and scope of adjustments as envisaged u/s 143(1)(a)(iv). The action of the learned authorities is illegal.

(4) That the learned CIT(A) erred in law and on facts in holding that the employee's contribution to Provident Fund and ESIC are governed by the provisions of section 36(1)(va). On the facts and circumstances of the case, following the principal of Judicial Discipline, the decision of Jurisdictional High Court of Bombay is binding on its subordinate authorities and thus the issue is governed by section 43B and the action of the learned CIT(A) is illegal.

(5) That the amendment in section 36 and 43B made in Finance Act 2021 is applicable prospectively and thus not applicable to the assessment year under consideration. The action of learned CIT(A) in confirming the addition holding otherwise is contrary to the provisions of the Act and various decisions.

(6) Without prejudice to our objection in Ground No.2, 3, 4 and 5, the learned CIT(A) erred in law and on facts in not considering the Rectification Order passed u/s 154 subsequently on 4-2-2020. On the facts and circumstances of the case, the addition amount was restricted to Rs.9,88,728/- in the order u/s 154 which overrides the Intimation passed u/s 143(1) earlier.

(7) That the learned CIT(A) erred in law and on facts in confirming the action of AO in charging interest u/s. 234C of the Income Tax Act. The interest charged is improper.

(8) That for any other ground with kind permission of your honour at the time of hearing of appeal."

2. The facts of the case, as culled out from the learned CIT(A)'s order are as follows:-

3. The assessee is a private limited company engaged in manufacture of steel products. The return of income was electronically filed on 03/10/2018, declaring total income of ₹ 38,22,84,980. The communication of proposed adjustment under section 143(1)(a) of the Income Tax Act, 1961 ("the Act")

dated 17/03/2019, was issued for which a reply was filed on 09/04/2019 electronically, opposing the proposed adjustment with reasons. Later, return of income was processed and intimation under section 143(1) dated 01/10/2019 was issued. In the said intimation, addition of ₹ 26,49,199, was made on account of late payment of contribution received from Employees for Provident Fund and State Insurance Corporation Fund. After the receipt of intimation, the assessee found mistake in the Tax Audit Report in which the Tax Auditor has mistakenly filled the due date of payment in column of actual date of payment and vice-versa. The copy of revised Tax Audit Report containing the details of mistake committed and its correction, as mentioned, have been furnished in the paper book furnished by the learned Counsel for the assessee. Thus, the payments mentioned therein were made before the due date, but due to unintentional typographic and feeding error by the Tax Auditor in the Form 3CD, the same appears to be a delayed payment. The Tax Audit Report was revised correcting the mistakes and thereafter the return of income was reprocessed consequent to which rectification order dated 04/02/2020, passed under section 154 of the Act wherein the amount of addition was revised to ₹ 9,88,728, considering the corrections made in the Tax Audit Report.

4. Before the learned CIT(A), the assessee challenged addition made in the intimation under section 143(1) of the Act. The learned CIT(A) considered the submission of the assessee and found no merit in the submission and the case laws quoted by the assessee. The intimation order passed by the

Assessing Officer was confirmed. The assessee being aggrieved, is in further appeal challenging the issues as raised in their grounds of appeal.

5. We shall be dealing each ground raised by the assessee herein below:-

6. In grounds no.1 to 5, the assessee has challenged the legality of addition made in the intimation under section 143(1) of the Act and submitted that the intimation passed under section 143(1) is bad in law and the learned CIT(A) erred in confirming the same.

7. Before us, the learned Authorised Representative vehemently contended that the payments have been made before the due date of filing of return under section 139 of the Act and, therefore, allowable. The adjustment made in the intimation is outside the purview and scope of adjustments as envisaged under section 143(1)(a)(iv) of the Act. The learned Authorised Representative submitted that the amendments in sections 36 and 43B of the Act made in Finance Act, 2021, are applicable prospectively and is not applicable in the assessment year under consideration. The disallowance based on reporting in Tax Audit Report is contrary to the views expressed by Jurisdictional High Court and the particular details, as required in Clause 20(b), are required to be furnished by the Tax Auditors compulsorily under Compliance Law which does not mean that the Tax Auditor are of the view that such contributions should be added back to assessee's taxable income. It was further contended that the due date of payment of contribution to PF/ESIC should be reckoned from the date/month in which the payment of

salary is made. The assessee submitted an order dated 04/02/2020, passed under section 154, in which considering the revised Tax Audit Report, addition made under section 36(1)(va) was revised to ₹ 9,88,728, being delayed payment of Employees Contribution of PF/ESIC Fund as per the actual date of payments made.

8. The learned Departmental Representative strongly supported the order of the learned CIT(A) and contended that the delayed payment of PF/ESIC are disallowable in view of the decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v/s CIT, [2022] 448 ITR 518 (SC).

9. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. In ground no.6, the assessee is aggrieved by the order of the learned CIT(A) in not considering rectification order dated 04/02/2020, passed under section 154 by which the addition amount was restricted to ₹ 9,88,728. We find that in the intimation order dated 01/10/2019, passed under section 143(1) of the Act, an addition of ₹ 26,49,199, was made by the DCIT, Central Processing Centre, Bangalore, under section 36(1)(va), details of which are mentioned in Annexure-Part A-OI-6k. The assessee found mistakes in the Tax Audit Report due to typographic and feeding error by the Tax Auditor in Form no.3CD, due to details of actual date of payment and due date of payment being furnished incorrectly in the column. Consequently, a revised Tax Audit Report dated 04/01/2020 was issued and uploaded by the Tax Auditor. On the application for rectification by which the assessee furnished revised Tax Audit Report correcting the mistake due to typographical error in the original

Form no.3CD, and also re-processed the return of income rectifying the mistake, the ADIT, CPC, accepted the application of rectification and the rectification order under section 154 was passed on 04/02/2020 and in the aforementioned rectified intimation, the addition was restricted to ₹ 9,88,728, details of which are available in the rectified intimation order at Annexure-Part-A-OI-6k. Thus, for the purpose of present appeal, the amount finally disallowed shall be ₹ 9,88,728, in view of the discussions made hereafter about the legal grounds raised by the assessee.

10. The grounds no.1 to 5, the assessee has challenged the legality of prima facie adjustment made in order under section 143(1) of the Act.

11. This issue of addition made on account of belated payment of employees' contribution to PF and ESIC is now covered by the decision of Supreme Court in Checkmate Services (P.) Ltd. (supra). Accordingly, following the judgement of Supreme Court, the ground of the assessee's appeal stands dismissed. In view thereof, the addition to the extent of ₹ 9,88,728, is confirmed in view of the judgement of Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra)

12. In ground no.7, the assessee challenged the interest charged under section 234C of the Income Tax Act.

13. According to the learned A.R., the interest under section 234C was charged on the income assessed in the intimation under section 143(1) and also in the rectification order u/s 154. The income tax charged on the assessed income was considered while determining the levy of interest under

section 234C of the Act. The learned A.R. vehemently contended that the interest under section 234C ought to have been charged on the basis of tax determined on returned income.

14. We have given our thoughtful consideration to the provisions of section 234C which provides that where in any financial year the assessee liable to pay Advance Tax under section 208 has failed to pay such tax or is less than the percentage prescribed in every quarter mentioned in the Clause (i) of section 234C of the tax due on the returned income than the assessee shall be liable to pay simple interest @1% per month as per mechanics provided therein on the tax due on returned income. Thus, the interest under section 234C is required to be determined considering the tax due as per returned income. Accordingly, the Assessing Officer is directed to determine the interest under section 234C on the basis of tax due on returned income. The ground no.7 is allowed.

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

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur