

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice President
and
Shri Manjunatha G., Accountant Member

आ.अपी.सं / **ITA No.957/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2020-21)

GP Spira Duct Private Limited Hyderabad [PAN : AACCG2696M]	Vs.	Deputy Commissioner of Income Tax Circle-2(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A.V.Raghuram, AR	
राजस्व द्वारा / Revenue by:	Shri Srinath Sadanala, DR	
सुनवाई की तारीख / Date of hearing:	04/12/2024	
घोषणा की तारीख / Date of Pronouncement:	04/12/2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)] dated 06.08.2024 and pertains to A.Y.2020-21.

2. The brief facts of the case are that the appellant company filed its return of income for the A.Y.2020-21 on 22.12.2020, admitting total income of Rs.1,69,65,640/-. The return of income filed by the assessee has been processed by the

AO(CPC), issued intimation u/s 143(1) of the Income tax Act, 1961 ("the Act") and determined total income at Rs.1,85,36,790/-, by disallowing bonus expenditure of Rs.13,87,250/- and addition towards ESI and PF at Rs.1,83,903/-.

3. The assessee carried the matter in appeal before the CIT(A) and the Ld.CIT(A) for the reasons stated in their appellate order dated 06.08.2024, sustained the additions made by the AO(CPC) towards disallowance of bonus expenditure of ESI and PF.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the Ld.CIT(A) is erred in sustaining the additions made by the AO(CPC) towards bonus expenditure on the basis of tax report issued by the tax auditor, where the tax auditor referred the payment of bonus to employees under Clause 26(i)(B)(a) and stated that the appellant has paid a sum of Rs.4,47,061/- on or before the due date of furnishing the return of income u/s 139 of the Act. Further, the remaining expenditure towards bonus payment to employees has been paid on or before the end of the relevant financial year. The AO(CPC) by considering the total expenditure under the head 'Bonus to Employees' referred to in Clause 20(a) of Form 3CD, disallowed entire expenditure, without verifying the facts. Therefore, he submitted that to verify

the facts and to allow the expenditure, the matter may be set aside to the file of the AO.

6. The learned Counsel for the assessee, further referring to disallowance of ESI payments, submitted that the assessee itself has suo moto disallowed employees contribution to ESI u/s 36(1)(va) of the Act, amounting to Rs.1,46,166/-. However, the AO(CPC), once again, on the basis of tax audit report disallowed the ESI payment of Rs.1,83,903/-. If we consider the disallowances made by the AO(CPC), the very same amount has been disallowed twice, i.e. one by the assessee and the another by the AO(CPC). Therefore, he submitted that to verify the facts, the matter may be set aside to the file of the AO.

7. The Ld.DR on the other hand, supporting the order of the Ld.CIT(A) submitted that the assessee could not file relevant evidences to prove the payment of bonus to employees on or before the due date of furnishing the return of income u/s 139 of the Act and also payment of ESI contribution on or before the due date prescribed under the relevant Acts. Further, the appellant has now filed certain evidences and argued that the expenditure incurred under the head 'Bonus to Staff' and ESI payment has been made on or before the due date prescribed under the Act. Since the facts were not available before the AO(CPC) / Ld.CIT(A), the matter may be set aside to the file of the AO for further verification of facts and to decide the issue in accordance with law.

8. We have heard both the parties, perused the material on record and gone through the orders of the authorities below.

The assessee has paid bonus to staff for Rs.13,87,250/- and the same has been reported in Clause 20(a) of Form 3CD. The AO(CPC) disallowed the bonus expenditure while processing the return of income u/s 143(1) of the Act, on the ground that the said expenditure has not been paid on or before the due date for furnishing the return of income. It was the contention of the assessee before us, that the appellant has paid bonus to staff on three occasions and out of Rs.13,87,250/-, Rs.9,40,489/- has been paid on or before the end of the financial year for which the appellant has filed relevant list of bonus payments to staff and corresponding bank statements. The appellant had also paid a sum of Rs.4,47,061/- on 17.10.2020 and claimed that the said payment was made on or before the due date for furnishing the return of income u/s 139(1) of the Act. This fact is further strengthened by the Form 3CD issued by the tax auditor. The tax auditor clearly stated that Rs.4,47,061/- has been paid on or before the due date for furnishing the return of income u/s 139 of the Act. Although the facts are very clear, but the AO(CPC), while processing the return of income made disallowance of bonus expenditure of Rs.13,87,250/- on the basis of Clause 20(a) of Form 3CD, even though the said report is in reference to total expenditure incurred by the assessee u/s 36(1)(ii) of the Act. Otherwise, the appellant has paid bonus to staff on or before the due date for furnishing the return of income. Therefore, we are of the considered view that the AO(CPC) has erred in making disallowance of bonus expenditure u/s 36(1)(ii) r.w.s. 43B of the Act. However, the fact remains that the fact with regard to details of payment and corresponding evidences were not available before the AO(CPC)

while processing the return of income u/s 143(1) of the Act. Therefore, we are of the considered view that to verify the facts with regard to date of payment of bonus to staff, in light of provisions of section 36(1)(ii) r.w.s.43B, the matter needs to be set aside to the file of the AO for verification. Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO to verify the claim of the assessee in light of relevant evidences that may be filed by the assessee. The AO is directed to verify the claim of the assessee and allow the claim as per law.

9. In so far as, disallowance of ESI payments of Rs.1,83,903/-, it is an admitted fact that the assessee itself has made suo moto disallowance in the statement of total income for Rs.1,46,166/-, however, the AO(CPC), once again disallowed the above amount on the basis of audit report, whereas, the tax auditor has reported individual payments of contribution to ESI with due date and actual date of payment. If we go by tax audit report, more particularly Clause 20(b), the tax auditor has reported payments made beyond the due date and if we consider the said payments, we cannot find fault with the disallowance made by the AO(CPC). However, the fact remains that the assessee itself has made suo moto disallowance of ESI contribution, which was made beyond the due date specified in the respective Acts. From the above, it is very clear that the amount of belated payment of ESI contribution has been disallowed twice. Therefore, we are of the considered view, that the AO(CPC) has erred in making disallowance of ESI contribution u/s 36(1)(v) r.w.s.43B of the Act, even though the

assessee had already disallowed said payment in the statement of income. Although, in principle, the additions made by the AO(CPC) cannot be sustained, but, because these evidences were not available before the AO(CPC) while passing intimation u/s 143(1) of the Act, in our considered view, for limited purpose of verification of facts, the matter needs to be set aside to AO. Thus, we set aside the order of CIT(A) and the issue is restored to the file of the AO for verification of the fact with regard to payments made towards contribution of ESI, in light of suo moto disallowance made by the assessee in the statement of total income. The AO is directed to verify the facts in light of arguments of the assessee and allow the claim of the assessee as per law.

10. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 4th December, 2024.

Sd/-

Sd/-

(VIJAY PAL RAO)
VICE PRESIDENT

(MANJUNATHA G.)
ACCOUNTANT MEMBER

Hyderabad,
Dated 4th December, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	M/s GP Spira Duct Private Limited, D-94, Toad No.16, Phase-1, IDA, Jeedmetla, Hyderabad
2	The Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad
3	The Pr. CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order