

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
(VIRTUAL HEARING AT BANGALORE)**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.602/COCH/2023
Assessment year : 2018-19

Standard Treads Pvt. Ltd., Midas Marketing Building, Varisserry, Mariathuruthu P.O., Kottayam – 686 107. PAN: AADCS 1272N	Vs.	The Deputy Commissioner of Income Tax, Circle & TPS, Kottayam.
APPELLANT		RESPONDENT

Appellant by	:	Shri Mathew Joseph, CA
Respondent by	:	Smt. Leena Lal, Sr.DR

Date of hearing	:	05.12.2024
Date of Pronouncement	:	03.01.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Standard Treads Pvt. Ltd.(the assessee/appellant) for the assessment year 2018-19 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A)] dated 20.6.203 wherein the appeal filed by the assessee against the intimation passed u/s. 143(1) of the Income-tax Act, 1961 (the Act) was dismissed.

2. The assessee is aggrieved with the same and has raised the following grounds of appeal:-

- “1. The impugned order is bad in law and is opposed to the facts and circumstances of the case.
2. The learned Appellate Authority has erred in rejecting the appeal on the ground that the same has been barred by limitation.
3. The learned Appellate Authority failed to notice that the intimation u/s 143(1) has been communicated to the Appellant on 21-11-2019 by email. Appeal has been filed on 20-12-2019 and therefore, there is no delay in filing the appeal.
4. Without prejudice to the above the learned Appellate Authority has erred in disregarding the ground of disallowing the contribution to Group Gratuity Fund of Rs. 8,14,385/-.
5. Without prejudice to the above the Appellate Authority has erred in disregarding the ground of disallowing the ESI contribution to the extent of Rs. 2,22,193/-.

On these and the other grounds to be submitted at the time of hearing. the appeal may please be allowed the impugned intimation be set aside with consequential relief.”

3. The main grievance of the assessee is that contribution of group gratuity fund of Rs.8,14,385 and ESI contribution amounting to Rs.2,22,193 was disallowed by CPC as per intimation dated 17.10.2019 u/s. 143(1) of the Act.
4. The facts of the case show that assessee is a company engaged in the business of manufacture & sale of tyre retreading material. It filed its return of income on 23.3.2019 at income of Rs.1,73,23,376. This return was processed by CPC and intimation dated 17.10.2019 was issued wherein the group gratuity contribution was disallowed to the

extent of Rs.8,14,385 as the claim was found to be inconsistent with Form 3CD. Further ESI contribution to the extent of Rs.2,22,193 was also disallowed on the ground that same has been paid after the due date.

5. The assessee aggrieved with the same preferred appeal before the Id. CIT(A). The Id. CIT(A) instead of deciding the issue on merits of the case, held that in Form 35 assessee has mentioned the date of service of intimation as 20.11.2019, whereas intimation is dated 17.10.2019. Therefore, according to him, there is a delay of 34 days in filing of the appeal. The Id. CIT(A) held that CPC issues the intimation which is system generated and served immediately on the email of assessee on real time basis. Therefore, though intimation is dated 17.10.2019, the date of service of intimation mentioned in Form 35 is 20.11.2019 is incorrect. Therefore, according to him, there is an inordinate delay of 34 days for which there is no condonation petition showing sufficient cause for the delay in filing of appeal, the appeal of assessee was thus dismissed on 20.6.2023. The assessee is in appeal before us against that order.
6. It was submitted that the Id. AR that assessee received intimation only on 21.11.2019 at 4.35 AM and to support his contention, he submitted copy of Gmail wherein the date of receipt of email was stated to be Nov. 21, 2019 at 4.35 AM. He therefore submitted that finding of Id. CIT(A) that email is generated immediately as soon as the intimation u/s. 143(1) is uploaded by the CPC is incorrect. Therefore, there is no

delay in filing the appeal before the CIT(A) and hence the order of Id. CIT(A) dismissing the appeal of assessee as delayed is incorrect.

7. Even otherwise on merits of the case, it was submitted that amount paid towards LIC approved group gratuity fund was disallowed in computation of total income. Further, EPF contribution of employees could not be paid on 15.6.2016, but was paid on 16.6.2017 due to technical glitch on the portal of PF. Therefore, on merits also, the disallowance is incorrect.
8. The Id. DR vehemently supported the order of the Id. lower authorities.
9. We have carefully considered the rival contentions and perused the orders of Id. lower authorities. The only issue in this appeal is that the Id. CIT(A) has dismissed the appeal of assessee holding it to be delayed by 34 days. The Id. CIT(A) assumed that as soon as intimation is passed by CPC, same is received by assessee. Therefore, 30 days time considered by the Id. CIT(A) is the date from the date of intimation. However, assessee has produced before us a print-out of the original email wherein it is found that assessee has received intimation only on 21.11.2019 about the order passed on 17.10.2019. Thus, it is the claim of assessee that intimation passed by CPC on 17.10.2019 was received by assessee on 21.11.2019 and within 30 days from the date of receipt of that order, assessee has filed the appeal and therefore there is no delay in filing of appeal.

10. We find that assessee has produced copy of email wherein the intimation was received on 21.11.2019 and if that date of receipt of order is considered, there is no delay in filing of appeal by assessee before the Id. CIT(A). We do not have any evidence that assessee has received the order on the date on which the CPC passed the order. In view of these facts, we restore the appeal back to the file of Id. CIT(A) to decide it on merits of the case by admitting the appeal of assessee. If any contrary evidence is found, the Id. CIT(A) after confronting the assessee, may decide about the admission of the appeal.
11. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 03rd day of January, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 03rd January, 2025.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT

By order

Assistant Registrar
ITAT, Cochin.