

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI. OMKARESHWAR CHIDARA, AM

ITA No. 5846/Mum/2024
(Assessment Year: 2018-19)

Axis Carriers and logistics Ltd. 803, B Kukreja Palace, Vallabh Baug Lane, Ghatkopar East, Mumbai – 400075.	Vs.	Deputy Commissioner of Income Tax, 14(1)(1) Aayakar Bhavan, Churchgate, Mumbai – 400020.
PAN/GIR No. AADCA9585A		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Rakesh Milwani
Respondent by	:	Shri. Ram Krishn Kedia (Sr. DR)

Date of Hearing	:	06.01.2025
Date of Pronouncement	:	29.01.2025

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has raised the following grounds of appeal:

1. Considering the facts and circumstances of the case and in law, it is submitted that once an order is passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter, for the sake of brevity, referred to as "the Act"), the intimation of processing of Return of Income u/s 143(1) of the Act ceases to be in force and cannot be acted upon having merged with order passed u/s 143(3) of the Act and therefore additions made while processing Return of Income cease to exist once order is passed u/s 143(3) of the Act, and the additions made to the income u/s 143(1) of the Act and demands raised thereon ought to be deleted.



2. Considering the facts and circumstances of the case and in law, the Learned First Appellate Authority ought to have deleted the disallowance of Rs. 8,06,254 to the income of the appellant u/s 36(1)(va) of the Act as disallowance of such a nature ought not to have been made u/s 143(1) of the Act.

3. Considering the facts and circumstances of the case, such other and further reliefs be granted to the appellant, as may be considered and deemed necessary.

4. The appellant craves leave to add and/or alter and/or amend any ground(s) of appeal as may be considered necessary.”

3. Brief facts of the case are that the assessee is a private limited company and had filed its return of income dated 22.01.2019, declaring total loss of Rs. 1,31,63,850/-, the same was processed u/s. 143(1) of the Act. The CPC vide communication dated 10.05.2019 u/s. 143(1)(a) of the Act, proposed to adjust the returned income of the assessee and vide intimation dated 19.11.2019, made a disallowance of Rs. 8,06,254/- being the employee's contribution to PF and ESIC paid belatedly after the due date prescribed under the relevant acts along with the other addition/disallowance.
4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the order passed u/s. 143(1) of the Act. The Id. CIT(A) upheld the disallowance made by the Id. AO/CPC by relying on the decision of the Hon'ble Apex Court in the case of ***Checkmate Services Pvt. Ltd. vs. CIT (in Civil Appeal No. 2833 of 2016 dated 12.10.2022)***.
5. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
6. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions/disallowance made by the Id. AO/CPC on the ground that once the assessment order u/s. 143(3) is passed, the



intimation u/s. 143(1) seized to exist and the same merges with Section 143(3) of the Act.

7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the disallowance u/s. 143(1) cannot be sustained subsequent to the passing of the assessment order dated 29.07.2021 for the year under consideration as the principles of doctrine of merger would be applicable. The ld. AR relied on the following decisions.
 - a. *“National Stock Exchange of India Ltd. vs. DCIT Circle 7(1)(1), Mumbai, ITA No. 732/Mum/2023, order dated 22.09.2023.*
 - b. *Sai Prerna Co-op. Credit Society Ltd. vs. Income Tax Officer 17(3)(2), Mumbai, ITA No. 3169/Mum/2022, order dated 20.02.2023.*
 - c. *The South India Club vs. Income Tax Officer Ward Exemption 2(3), New Delhi, ITA No. 354/Del./2024, order dated 22.05.2024”*
8. The ld. DR on the other hand controverted the said fact and contended that the issue in Section 143(3) was different than the disallowance made in Section 143(1) proceeding. The ld. DR further contended that doctrine of merger would not be applicable in the present case, where the ld. AO has not dealt with the same issue in the Section 143(1) intimation. The ld. DR relied on the order of the ld. CIT(A).
9. In the above facts, the only issue that has to be adjudicated is whether the order passed u/s. 143(1) would merge automatically with Section 143(3) order passed by the ld. AO. In the present case in hand, it is observed that disallowance u/s. 36(1)(va) of the Act has been made towards delayed payment of employee's contribution to PF and ESIC deposited belatedly after the due date prescribed under the relevant Acts, but before



filing of the return of income by CPC vide intimation u/s. 143(1) of the Act and the said issue is covered against the assessee by the decision of Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd., dated 12.02.2022*. On perusal of the assessment order passed u/s. 143(3), dated 29.07.2021, the issue of assessment was disallowance under 40(a)(ia) of the Act on non-deduction of TDS on payment of tracking expenses along with a disallowance of repair and maintenance expenses. Pertinently, the issue of delayed payment to PF and ESIC was not part of the assessment order and the same was not discussed by the ld. AO during the scrutiny assessment. The ld. AO has also considered only the returned income while computing the total income and not the income computed under Section 143(1) of the Act. It is also a settled proposition of law that the order u/s. 143(1) does not merge automatically with the assessment order passed u/s. 143(3) of the Act and the same is covered by the coordinate bench decision in the case of *Areca Trust vs. CIT(Appeals), ITA No. 433/Bang/2023, order dated 26.07.2023* on identical facts. The decisions relied upon by the ld. AR are distinguishable on the facts of the present case. We therefore find no infirmity in the order of ld. CIT(A). Hence, the grounds raised by the assessee are dismissed.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 29.01.2025

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 29.01.2025
Karishma J. Pawar (Stenographer)



ITA No. 5846/Mum/2024 (A.Y. 2018-19)
Axis Carriers and Logistics Ltd.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai