

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.613/Kol/2024
Assessment Year: 2021-22

Supreme & Co. Pvt. Ltd.....Appellant
53, Justice Chandra Madhav Road,
West Bengal – 700020.
[PAN: AACCA7232K]

vs.

DCIT, Circle-1(1), Kolkata..... Respondent

Appearances by:

Shri Ramesh Kr. Varma, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 18, 2024

Date of pronouncing the order : June 24, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 02.02.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld. CIT(Appeal) erred in making disallowance of Rs.85,23,450/- u/s 36(1)(va) in respect of delayed deposits of PF.

2. For that the Ld. CIT(Appeal) ought not to have made any disallowance in respect of delayed deposit of PF the same having been deposited before the due date of furnishing of the return of income.

3. For that the disallowance of Rs.85,23,450/- u/s 36(1)(va) in respect of delayed deposit of PF was wrong and uncalled for.

4. CIT(A) has upheld the disallowance of A.O."

3. The sole issue raised by the assessee in this appeal is relating to the action of the ld. CIT(A) in confirming the disallowance of Rs.85,23,450/- made by the Assessing Officer on account of delayed payment of Provident Fund ('PF') and Employees State Insurance ('ESI') by invoking section 36(1)(va) of the Act.

4. At the outset, the ld. counsel for the assessee has submitted that the deposits towards PF and ESI totalling to Rs.85,23,450/- consist of employees' contribution and employer's contribution. The Assessing Officer treated the entire amount as employees' contribution towards Provident Fund and Employees State Insurance. He disallowed the entire amount u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on account of delayed deposit of employees' contribution to PF/ESI i.e. after the due date as provided under the respective welfare enactments. The ld. Counsel, in this respect, has submitted that the employer's contribution was duly deposited well within the due date of filing of Income Tax Return and the same was allowable as deduction u/s 43B of the Act. He, therefore, has pleaded that the disallowance towards employer's contribution was not warranted.

5. Considering the submissions made above, the Assessing Officer is directed to verify the contentions of the assessee and if the employer's contribution has been deposited before the due date of filing of return of income as per the provisions of section 43B read with section 36 of the Act, the Assessing Officer will allow the same accordingly.

5.1 However, so far as the delayed deposit of employees' contribution to PF/ESI is concerned, the ld. Counsel has not pressed the issue in view of the decision of the Hon'ble Supreme Court in 'Checkmate Services Pvt. Ltd. Vs. CIT' reported in (2022) 143 taxmann.com 178

(SC) dated 12.10.2022, wherein, it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed even though deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act,1961.

6. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes as directed above.

Kolkata, the 24th June, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 24.06.2024.

RS

Copy of the order forwarded to:

1. Supreme & Co. Pvt. Ltd
2. DCIT, Circle-1(1), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches