

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1" : DELHI
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.1855/Del./2020
Assessment Year 2018-2019

M/s. Rukmini Polytubes Pvt. Ltd., X-22, Loha Mandi, Naraina, New Delhi – 110 028. PAN AACCR8167Q	vs.	The DCIT, CPC Bangalore – 560 500
(Appellant)		(Respondent)

For Assessee :	Shri Suresh Kumar Gupta, CA
For Revenue :	Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing :	29.07.2021
Date of Pronouncement :	13.10.2021

ORDER

This appeal filed by the Assessee is directed against the Order dated 11.09.2020 of the Ld. CIT(A), Delhi-7, relating to the A.Y. 2018-2019.

2. The assessee raised sole ground challenging the order of the Ld. CIT(A) in sustaining the disallowance of Rs.1,82,543/- made by the DCIT, CPC passed order under

section 143(1) in respect of delayed payment of employees' contribution to PF & ESI.

3. Facts of the case, in brief, are that the assessee is a Private Limited Company engaged in the business of manufacturing of PVC pipes and trading of PVC resin and CPE and other products. It filed its return of income declaring total income of Rs.24,92,370/- on 31.10.2018. The DCIT, CPC, Bangalore in the intimation under section 143[1] of the I.T. Act, 1961 vide order dated 13.11.2019 determined the total income of the assessee at Rs.33,40,680/- wherein he made addition of Rs.8,48,310/- which includes delayed payment of employees' contribution to PF and ESI of Rs.61,539/-, disallowance under section 43(b) at Rs.1,82,543/- and difference in income/receipt at Rs.6,04,227/-.

3.1. Aggrieved by the order of the DCIT, CPC, Bangalore, the assessee preferred an appeal before the Ld. CIT(A). Since the assessee did not press adjustment of Rs.6,04,227/- before the Ld. CIT(A), the Ld. CIT(A) dismissed the same.

3.2. So far as the addition regarding belated payment of PF and ESI of Rs.61,539/- is concerned, the Ld. CIT(A) deleted the addition subject to verification of payment at the end of the A.O. The Ld. CIT(A) also directed the A.O. to verify the payments and if it is paid before the due date of filing the return, it shall be allowed.

3.3. So far as the adjustment of Rs.6,04,227/- made to the returned income regarding difference in income/receipt credited in P & L A/c and with income considered under the other heads of income is concerned, the Learned Counsel for the Assessee submitted that rectification application filed before the CPC with respect to adjustment of Rs.6,04,227/- has been considered by the DCIT, CPC and the DCIT, CPC deleted the addition. Therefore, the assessee did not press this ground before the Ld. CIT(A). In view of the above, the Ld. CIT(A) dismissed this ground of appeal.

3.4. So far as the disallowance of Rs.1,82,543/- made under section 43B, the Ld. CIT(A) sustained the addition made by the A.O. CPC on the ground that the disallowance

of the same was based on the Report of the Auditor's in Form No.3CD.

4. Aggrieved by the order of the Ld. CIT(A) in sustaining the addition of Rs.1,82,543 under section 43B of the I.T. Act, the assessee is in appeal before the Tribunal by raising the following grounds :

1. *The Ld CIT(A) has erred in upholding addition of Rs.1,82,543/- u/s 43B of IT Act ignoring the fact that the above figure has been reported under wrong column of Form 3CD and the above statutory dues were duly paid before the date of filling of return of income prescribed u/s 139(1) of IT Act.*
2. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

5. On Ground No.1, the Learned Counsel for the Assessee submitted that the Tax Auditor in his report under section 43B in Item No.26 has wrongly mentioned that the

following items which are incorporated in previous year were not paid on or before the aforesaid date. The Learned Counsel for the Assessee drew our attention to the following chart :

Nature of Liability	Amount (in Rs.)	Date of Payment	Remarks
Provident Fund	38036	14.04.2019 (PB 91)	These items appear as part of accrued expense of Rs. 13,14,630/- shown in audited balance sheet in Note No.8(i) "Other Current Liabilities (PB 36) and the summary of above expenses are at page 114 showing these outstanding liabilities highlighted in the said summary chart. 1 Ledger account of PF/ESI Payable also placed at pages 115-116 where liability is accounted for after including other charges paid at the 1 time of payment.
ESI	9788	10.04.2018 (PB 103)	
Bonus payable	119623	30.06.2018 (PB 109-113)	
GST	15096	16.04.2018 (PB 108)	These amount is part of Duties and taxes Payable of Rs.1,45,904/- shown in audited balance sheet in Note No.8(ii) "Other Current Liabilities (PB 36). The ledger accounts of payables are at pages 117-121 showing the above outstanding liability.

5.1. He submitted that from the perusal of the above details shows that the date of payment against each other item falls prior to the due date of filing of the return of income under section 139(1) and, therefore, the above report in the tax audit report is nothing, but, a mistake by the Tax Auditor in choosing the correct Head of disclosure

in Form No.3CD. He submitted that the correct head under which the above has to be reported is in item No.26B(a) i.e. under the heading "sum incurred in the previous year and was paid on or before the due date of furnishing of return of income of the previous year under section 139(1) of I.T. Act". This fact of reporting the information in incorrect head can be verified from perusal of the ledger account of the amounts payable shown in the balance sheet under the head and the ledger account of the above item in the next financial year in which amounts have been paid before the due date of filing of return supported with the payments challans.

5.2. He accordingly submitted that the adjustment of Rs.1,82,543/- is as a result of reporting of 43B payments under wrong Heads although such reporting clearly shows that it is a clerical mistake committed by the Tax Auditor which could be rectified under section 154 being mistake apparent from records by verifying the payments challans submitted in the paper book.

6. The Ld. D.R. on the other hand strongly supported the order of the Ld. CIT(A) and submitted that since the assessee has not made the deposits on account of employees' contribution to PF & ESI before the specified dates as mentioned in the Statute, therefore, the Ld. CIT(A) was fully justified in sustaining the addition made by the CPC. He submitted that there are various decisions in favour of the Revenue where the Hon'ble Courts have held that the Amendment by Finance Act, 2015 in Section 43B is restricted only in respect of employers contribution to PF & ESI and if the same is paid on or before the due date of filing of the income tax return under section 139(1), the same is an allowable deduction under section 43B of the I.T. Act, 1961. However, the same amendment would not be applicable for the belated payment to employees' contribution to PF & ESI. He submitted that since the assessee has received the money by taking it from the salary of the employees and kept the same without making payment to the Government Account, the concession given in Section 43B is not available with respect to employees'

contribution. Referring to the amendments in the provisions of Section 43B as well as 36(1)(va), he submitted that the Explanation-2 inserted by Finance Act, 2021 clarifies that the definition of “Income” as provided in Section 2(24)(x) remains unchanged and provision of Section 43B does not apply and deemed to never have been applied for the purpose of determining the due date of payment of employees’ contribution to PF & ESI. He accordingly submitted that the grounds raised by the assessee should be dismissed.

7. After hearing both the sides, I find the adjustment of Rs.1,82,543/- under section 43B(b) was made by the CPC on account of belated payment of PF and ESI payment of Bonus and GST. It is the submission of the Learned Counsel for the Assessee that the above payments were made before the due dates as prescribed under the respective Act and due to a clerical mistake in the reporting by the Auditor’s the same was disallowed. Since the Ld. CIT(A) has sustained the addition merely based on the report of the Auditor, therefore, considering the totality of

the facts and circumstances of the case and in the interest of justice, I restore this issue to the file of the A.O. with a direction to verify the details and if the payments are made before the specified date, then, to delete the addition. Ground of appeal No.1 of the assessee is accordingly allowed for statistical purposes.

8. Ground No.2 being general in nature is dismissed.

9. In the result, appeal of the Assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 13.10.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Delhi, Dated 13th October, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-1' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.