

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 137 to 139/Mum/2022

(Assessment Years 2017-18 to 2019-20)

Global Waste Management Cell
Pvt. Ltd.
1st. Floor, Room No. 20/21 10
Atul, Niwas, 7th Khetwadi,
Mumbai-400 004

(Appellant)

Centralised Processing
Centre, Bengaluru
Income Tax Department
Karnataka-560500

Vs.

(Respondent)

PAN No. AACCG4780E

Assessee by : Shri Rahul Hakani, AR
Revenue by : Shri Hoshang B Irani, DR

Date of hearing: 24.05.2022
Date of pronouncement : 31.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These three appeals are filed by the assessee against the orders passed by the National Faceless Appeal Centre (NFAC), [the learned CIT(A)] for Assessment Year 2017-18 on 1st December, 2021, for Assessment Year 2018-19 also on the same date and for Assessment Year 2019-20 on 17th December, 2021, wherein, similar issue is involved on disallowance of employees' contribution to the provident fund before the due date of filing of the return of income for Assessment Year 2017-18, the disallowance is Rs. 2,94,92,315/- for Assessment Year 2018-19, the

disallowance is Rs.3,24,66,457/- and for Assessment Year 2019-20 such disallowance is Rs.2,49,40,874/-.

02. This disallowance is agitated by the assessee before us stating that when employees' contribution to provident fund ESI is deposited before the due date of filing of the return, no disallowance can be made.
03. The facts of the case shows that the assessee made a company engaged in the business of transportation of solid waste management. For Assessment Year 2017-18, it filed its return of income at Rs.4,38,53,460/-. The above return was processed and the order of intimation under section 143(1) of the income tax Act, 1961 (the Act) was passed on 18th December, 2018, by Central Processing Centre, Bangalore disallowing the employees contribution of Rs.2,94,92,315/- under section 36 (1) (va) of the Act due to late remittance. The assessee preferred before the National Faceless Centre, wherein the above disallowance was confirmed. The learned CIT(A) referred to the relevant statutory provisions and CBDT circular no. 22 of 2015 dated 17th December, 2015, and also the amendment by the Finance Act, 2021, which clarified the above position. Further, the decision of the Hon'ble Kerala High Court in case of CIT vs. M/s. Merchem ltd. in ITA No. 402 of 2009 dated 29 January 2010 was also followed. Hence, the disallowance made by CPC was confirmed by the learned CIT (A).
04. The learned Authorised Representative submitted that this issue is squarely covered in favour of the assessee by the

decision of the co-ordinate Bench in case of Kalpesh Synthetics Pvt. Ltd. (Mum) [2022] 137 taxmann.com 475 (Mumbai - Trib.)[27-04-2022] and therefore, same binds us, it was further stated that this issue is not with respect to the applicability of the amendment by the Finance Act, 2021, but whether Central Processing Centre can disallow such debatable sum or not.

05. The learned Departmental Representative vehemently supported the orders of the lower authorities. He specifically referred to the decision of Hon'ble Kerala High Court in M/s Merchem Ltd. (supra) and stated when the decision of Hon'ble High Court is available; the decision of the co-ordinate Bench should not be followed.
06. We have carefully considered the rival contentions and perused the orders of the lower authorities. The issue involved in all these three appeals is whether the Central Processing Centre, Bangalore can disallow the late payment of employees contribution to various funds under section 36(1)(va) read with Section 43B of the Act. This issue has recently been decided by the co-ordinate Bench in case of Kalpesh Synthetics Pvt. Ltd. vs. CPC Bangalore, [2022] 137 taxmann.com 475 (Mumbai - Trib.)[27-04-2022] wherein it has been held that :-

The adjustments under section 143(1)(a)(iv) in respect of "disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return" is to be read as, for example, subject to

the rider "except in a situation in which the audit report has taken a stand contrary to the law laid down by Hon'ble Courts above".

AO, CPC must dispose off objections of assessee against proposed adjustments u/s 143(1)(a) by a reasoned order as reasons constitute the soul of a quasi-judicial order.

07. The facts in the present case shows that form number 3 CD where the statement of particulars required to be furnished u/s 44AB of the income tax act 1961 are prepared by the assessee and is not an audit report. Form number 3CA is the audit report wherein the chartered accountant certified that the details mentioned in form number 3CD are true and correct. In paragraph number 20 (b) the assessee has mentioned that contribution received from employees for various funds as referred to in Section 36 (1) (va) of the act ,there has been delay in depositing employees contribution to the respective funds comparing the due date of payment as prescribed Under the respective laws. Undoubtedly, assessee has taken due date for payment as prescribed under the respective provident fund law and not the due date of filing of the return of income, which is now being claimed by the assessee as the due date by which the payment should have been made. Based on this, Central processing centre proposed to make an adjustment u/s 143 (1) (iv) stating that disallowance of expenditure is indicated in the audit report but is not taken into account in computing the total

income in the return. We find that indication was made in form number 3CD but disallowance was not made in the computation of total income. In response , it was stated that that the issue is covered in favour of the assessee by the decision of the honourable jurisdictional High Court and such payments are allowable if same are paid on or before the due date prescribed of filing of the return of income. Assessee also objected that in form number 3CD only information was provided about payment of provident fund and other Funds and therefore that clause cannot be an item of prima facie adjustment. We find that though there is an inconsistency in the details submitted in form number 3 CD by the assessee of the due date as prescribed in respective provident fund law but now assessee is claiming that such due date for payment should be the due date of filing of the return of income, which is also supported by the decision of the honourable jurisdictional High Court, we find that such adjustment cannot be made by the central processing unit. Thus in the present case the initiation of adjustment by invoking the provisions of Section 143 (1) (iv) was proper but the adjustment in view of the decision of the honourable jurisdictional High Court covering the issue in favour of the assessee is not proper.

08. Further reliance placed upon the decision of Kerala High Court in CIT V Merchem Limited does not help the case of the revenue in view of the decision of the honourable jurisdictional High Court in 368 ITR 749. As the issue involved in this appeal is squarely covered in favour of the

assessee, respectfully following the same, we reverse the orders of the lower authorities and direct the learned Assessing Officer to delete the disallowance of late deposit of employees' contribution of provident fund as same has been deposited before the due date of filing of return of income.

09. Accordingly we allow ground number 1 & 2 of the appeal in favour of the assessee and direct the learned assessing officer to delete the disallowance of ₹ 2,94,92,315/- on account of delayed payment of Provident fund and ESI of employees contribution Under the respective law but deposited before the due date of filing of the return of income for the reason that same are not disallowable.

010. Accordingly, we direct the learned Assessing Officer to delete the disallowance for all these three Assessment Years

011. In view of this, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 31.05.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)



4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai