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

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

ITA No. 1327/Mum/2022
(Assessment Year: 2010-11)

The Freyssinet Prestressed Concrete Co. Ltd. 6-B, Sterling Centre, 6th Floor, Dr. Annie Besant Road, Worli, Mumbai-400 018	Vs.	Dy. CIT, Circle-6(2) Mumbai
PAN/GIR No. AAACT 2145 C		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	Shri Madhur Aggarwal
Revenue by	:	Shri Vranda U. Matkarni

Date of Hearing	:	09.01.2023
Date of Pronouncement	:	24.01.2023

O R D E R

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) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The appeal filed by the assessee is time barred by 128 days which is covered by the decision of the Hon'ble Supreme Court in In Re: Cognizance for Extension of Limitation (in Suo Motu Writ Petition (C) No. 3 of 2020) where the Hon'ble Apex Court had extended the limitation time owning to the Covid-19 pandemic, we hereby condone the delay in filing the said appeal.

3. The assessee has challenged the addition made by the Assessing Officer (A.O. for short) u/s. 68 of the Act and confirmed by the ld. CIT(A). The assessee has also challenged the addition on account of employee contribution to Provident Fund (PF for short) and Employee's State Insurance Corporation (ESIC for short) u/s. 2(24)(x) of the Act read with Explanation to 36(1)(va) of the Act.

4. The brief facts are that the assessee company is engaged in the manufacturing of anchorages, cones, flexible sheathings and construction, repairs and rehabilitation of civil structures & prestressing, etc. The assessee filed its return of income dated 30.09.2010, declaring total income at Rs.3,92,99,157/-. The assessee filed its revised return of income dated 30.03.2012, declaring total income at Rs.4,05,90,086/-. The assessee's case was selected for scrutiny and the assessment order dated 18.03.2013 was passed u/s. 143(3) and the A.O. determined the total income at Rs.6,27,27,962/- by making various additions/disallowances.

5. Aggrieved by the said order, the assessee was in appeal before the ld. CIT(A), who confirmed the said addition made by the A.O.

6. Further aggrieved, the assessee is in appeal before us.

7. The learned Authorized Representative (ld. AR for short) for the assessee contended that the ld. CIT(A) has failed to considered the assessee's submission and brought our attention to notice dated 07.10.2022 from NFAC , Delhi to the assessee fixing up the date of furnishing written submissions on or before 20.10.2021. The ld. AR further stated that the written submission along with the documentary evidence was

submitted on 19.10.2021 along with Annexure 1 to 9 in response to the said notice. The ld. AR further contended that the ld. CIT(A) has stated that the assessee has failed to reply to the notice and that the said appeal was decided based on the material available on record. The ld. AR prayed for one more opportunity to present the assessee's case before the A.O., as there was no fault on the assessee's side in complaining with the notice.

8. The learned Departmental Representative (ld. DR for short) had nothing to controvert the same.

9. Having heard the rival submissions and perused the material available on record. We are of the considered view that the assessee has filed its written submission before NFAC, Delhi before the due date specified in notice dated 07.10.2021, which was not considered by the same. We are inclined to remand the matter back to the file of the A.O. adhering to the principles of natural justice. The A.O. is directed to decide the appeal on merits based on the written submissions and the documentary evidences proposed to be filed by the assessee.

10. Ground no. 1 being general in nature and ground no. 3 relates to the disallowance made u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act where the assessee is said to have deposited the employees contribution to PF and ESIC fund after the due date under the relevant Act but before filing of the returns. It is observed that the said ground is decided against the assessee in view of 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). Hence, this ground of appeal filed by the assessee is dismissed.

11. Ground no. 2 pertains to the addition made u/s. 68 of the Act. The same is remanded back to the file of the A.O. for *de novo* adjudication.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 24.01.2023

Sd/-	Sd/-
(Prashant Maharishi) Accountant Member	(Kavitha Rajagopal) Judicial Member

Mumbai; Dated : 24.01.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai