

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 708/HYD/2020**

Assessment Year: 2016-17

Dy.Commissioner of Income Tax, Circle-1(1), HYDERABAD	Vs	M/s.BSCPL Infrastructure Limited, HYDERABAD [PAN: AAACB8316K]
---	----	--

(Appellant)

(Respondent)

For Revenue : Shri Bala Krishna, CIT-DR

For Assessee : Shri Ravi Bhardwaj, AR

Date of Hearing : 09-09-2021

Date of Pronouncement : 27-10-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This Revenue's appeal for AY.2016-17 arises from the CIT(A)-1, Hyderabad's order dated 14-09-2020 passed in case No.10616 / 2019-20 / DCIT-1(2) / Hyd / CIT(A)-1 / 2020-21, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue has raised the following substantive grounds in the instant appeal:

*"i.Ld.CIT(A) erred in violating Rule 46A as no opportunity was given to AO to verify the contention of the assessee with necessary evidences ignoring that it was never raised before Assessing Officer.*

ii. Whether, on the facts and circumstances of the case, the Ld.CIT(A) is correct in directing the AO to delete the addition of Rs.1,68,48,149/- pertaining to the late payments of the employees contribution to Provident Fund & ESI if the payments were made before the due date of filing of the return of income.

iii. Whether, on the facts and circumstances of the case, the Ld.CIT(A) has erred in law in not considering that the late deposit of employees contribution towards provident fund & ESI is not allowable as deduction under the provisions of Section 2(24)(x) read with section 36(1)(va) of the Income Tax Act, 1961”.

3. We come to the former issue of Section 43B as well as Section 40(a)(ia) disallowance(s) pertaining to statutory dues and non-deduction of TDS, we note that the CIT(A)’s detailed discussion to this effect reads as under:

“8) Ground No.1 in appeal relate to disallowance towards interest payable to banks and financial institutions. Facts, issues and circumstances of the instant case have been considered. It is seen from the assessment order that the Assessing Officer disallowed the interest payable to banks/financial institutions stating that the appellant had not paid before the filing of return of income. The Assessing Officer disallowed the interest payable of Rs.12,32,61,341/- to banks/financial institutions u/s.43B of the Income Tax Act. In this context, the appellant submitted that it had paid the outstanding interest dues to banks and financial institutions before the due date for filing return of income u/s.139(1) of the Act. In support of the claim the appellant submitted copies of bank statements/financial institutions and ledger extracts. The details, such as, name of the bank/financial institution, amount payable and month of payment submitted by the appellant have been extracted supra. The appellant also placed reliance on the following decisions:

1. DCIT Kolkota Vs Telelink Nicco Ltd [ITA No.1629 of 1996]
2. S.R.F. Charitable Trust v. High Court of Delhi [ITA No.193 of 1992]
3. Murali Export House vs CIT Calcutta. [ITA No.238 of 1999].

8.1) The appellant further placed reliance on the ruling of Hon'ble Supreme Court in the case of Alom Extrusions [185 Taxman 416]. From the submissions, it is apparent that the appellant had remitted the outstanding interest dues to banks/financial institutions before the due date for filing return of income u/s.139(1) of the Act i.e. 30<sup>th</sup> November, 2016. Respectfully following the decision of the Hon'ble Supreme Court supra and other judicial decisions, the Assessing Officer is directed to allow the interest paid to banks/financial

*institutions, as the appellant had' paid interest to banks/financial institutions before the filing of return of income u/s.139(1). Considering the facts, issues and circumstances of the instant case, Ground No.1 in appeal is allowed.*

*9) Ground No.2 in appeal relate to disallowance of expenses for non-payment of TDS within due dates. Facts, issues and circumstances of the instant case have 'been perused:' From the assessment order it is seen that the Assessing Officer invoked' provisions of Section 40(a)(ia) for not complying with the provisions of Section '194A, 192B and 194C, since the appellant failed to furnish the proof for depositing the same into the Government account within the stipulate time and disallowed Rs.23,47,01,368 u/s.40(a)(ia) of the Income Tax Act, (30% of expenditure of-Rs.78,23,37,894/-). Further, the Assessing Officer also made disallowance u/s.40(a)(ia) of the Income Tax Act, Rs.87,19,18,376/- (@ 30% of 290,63,94,587/-) stating that the tax audit report at Col.No.34a, it was mentioned that the amount of tax deducted on the expenditure but not credited to the account of the Central Government.*

*9.1) During the course of appellate proceedings, the appellant submitted that the Tax auditor had inadvertently disclosed erroneous and contradictory facts and it had made all the payments to the government within due dates of filing return of income. The details submitted by the appellant have been extracted supra. The appellant further placed reliance on the following decisions:*

- (i) ACIT Bangalore vs Vimala S Warad [ITA No.1419 of 2012]*
- (ii) S.S. Warad vs ACIT, Bangalore [ITA No.375 of 2012]*
- (iii) Allahabad Wholesale Central Co-op. Store Ltd vs CIT Allahabad [ITA No.597 of 2016]*
- (iv) Lakozy Motors (P) Ltd Vs. Income-tax, Mumbai [ITA No.6982 & 7146 of 2012]*
- (v) Ushodaya Enterprises Ltd vs DCIT Hyderabad [ITA No.676 of 2009 & 411 of 2010]*

*9.2) Considering the facts, issues and circumstances, the contention of the appellant company holds merit. The ratio of the judicial decisions relied upon by the appellant regarding mistakes/ error by a CA have been seen. It is true that a mistake by a CA or Auditor should not normally impact the assessment proceedings. In the instant case, the Assessing Officer should have verified the TDS and other details during the course of assessment proceedings especially as these details had been furnished to the Assessing Officer. This would have been the appropriate course of action. However, this was not apparently done. Considering the issues, the Assessing Officer is directed to allow the same as the appellant had deducted tax at source and remitted into Central Government Account before the due*

date of filing of return of income u/s.139(1). Considering the facts, issues and circumstances, Ground No.2 in appeal is allowed.

10) Ground No.3 in appeal relate to disallowance of employee contribution of PF and ESI. Facts, issues and circumstances of the instant case have been perused. It is seen from the submissions of the appellant that there was a delay in payment of ESI and PF in the government account. It was submitted by the appellant that the appellant company made payments of ESI and PF within the due date of filing of return u/ s.139(1) of the Act. The appellant placed reliance on various decisions which have been extracted supra. The appellant further submitted that the Hon'ble Apex Court had dismissed the SLP of the department against the order of the Hon'ble High Court of Rajasthan in the case of Rajasthan State Beverages Corporation Limited [250 Taxmann 16]. It is seen from the details furnished by the appellant that the PF and ESI of employees contribution was remitted to the government account before filing of return of income u/s.139(1). The contention of the appellant holds merit. Considering the facts, issues, circumstances and following the decision of Hon'ble ITAT, Hyderabad and other decisions, which have been brought out supra, the AO is directed to give credit for the payments made after due date but before due date of filing of return of income. Considering the facts, issues and circumstances, Ground No.3 in appeal is allowed.

11) Ground No.4 in appeal relate to giving less TDS credit than that claimed. Facts, issues and circumstances of the instant case have been perused. The appellant submitted that while computing tax, credit for TDS was considered at Rs.16,30,30,432j - and requested to give credit for TDS as per Form 26AS which the appellant submitted was Rs.17,82,88,246.60.

11.1) It is seen from the return of income for the AY 2016-17 that the appellant had claimed TDS of Rs.17,82,10,116. This can be seen from the Return of Income of the appellant under the taxes paid column which is at Part B-TTI, Computation of tax liability on total income at Col.No.10(b). However, in the computation of total income, the Assessing Officer had given credit for TDS at Rs.16,30,30,432/-. This can be seen from the Computation Sheet dated 31.12.2019 which has gone to the appellant along with the order u/s.143(3) (Page3 of the Computation Sheet at Col. No.43). It was not known as to how and why this discrepancy has occurred while passing the Assessment Order u/s.143(3) dated 31. 12.2019 nor is it known if the reconciliation of these figures has been done with the Form-26AS of the appellant company. Considering the facts and circumstances, the Assessing Officer is directed to verify and allow the credit for TDS as per Form 26AS after verification. Considering the facts, issues and circumstances, Ground No.4 in appeal is partly allowed”.

4. Learned CIT-DR vehemently contended during the course of hearing that the CIT(A) had erred in law and on facts in deleting the impugned disallowances/additions after admitting additional evidence in violation of rule 46A of Income Tax Rules. We do not see any such additional evidence being filed either in assessee's submissions or in the CIT(A)'s detailed discussion (supra) which could lead us to the conclusion that there has been any violation of Rule 46A. Be that as it may, it has come on record that the corresponding payees banks/financial institutions *prima facie* stand assessed and verified in the lower appellate proceedings. We thus see no reason to accept the Revenue's instant technical argument alleging violation of Rule 46A of the Rules without affording any opportunity to the Assessing Officer. The Revenue fails in its instant former issue therefore.

5. Next comes the latter issue of ESI/PF disallowance of employees contribution to the tune of Rs.1,68,48,149/- for the reason that the same had been paid not before the due date as per the corresponding statute(s). The Revenue's plea before us is that the same had been paid before the due date of filing Sec.139(1) return only than after the due date prescribed in the corresponding statutes; respectively. We notice in this factual backdrop that the legislature has not only incorporated necessary amendment in Sections 36(1)(va) but also u/s.43B of the Act vide Finance Act, 2021 followed by the CBDT's Memorandum of Explanation that the same applies w.e.f. 01-04-2021 only. It is further not an issue that the foregoing legislative amendments have proposed employers' contribution/disallowance u/s.43B as against employee's

contribution u/s.36 (va) of the Act; respectively. However, keeping in mind the fact that the same has been clarified to be applicable w.e.f.01-04-2021 only. We hold that the impugned disallowance has been rightly deleted in the CIT(A)'s order in view of all these latest legislative developments. The Revenue fails in its latter substantive grievance therefore.

6. This Revenue's appeal is dismissed in above terms.

*Order pronounced in the open court on 27<sup>th</sup> October, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad,  
Dated: 27-10-2021

TNMM

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

*Copy to :*

- 1.Dy.Commissioner of Income Tax, Circle-1(1), Hyderabad.*
- 2.M/s.BSCPL Infrastructure Limited, 8-2-502/1/A, Jivi Towers, Road No.7, Banjara Hills, Hyderabad.*
- 3.CIT(Appeals)-1, Hyderabad.*
- 4.Pr.CIT-1, Hyderabad.*
- 5.D.R. ITAT, Hyderabad.*
- 6.Guard File.*