

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

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1557/MUM/2022
(Assessment Year: 2017-18)
&
ITA No. 1556/MUM/2022
(Assessment Year: 2019-20)

Olive Bar & Kitchen Private Limited,
14 Union Park, Palli Hill Tourist Hotel Pvt.
Ltd., Palli Hill Road, Khar West,
Mumbai - 400052
[PAN: AAACO5346G]

..... Appellant

Vs

Deputy Commissioner of Income Tax,
CPC, Banglore

..... Respondent

Appearances

For the Appellant/Assessee : Shri Mahesh O. Rajora
For the Respondent/Department : Shri Sandeep Raj

Date of conclusion of hearing : 05.09.2022
Date of pronouncement of order : 28.10.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals for the Assessment Year 2017-18 and 2019-2020. In each appeal the Appellant has challenged the order, dated 27.04.2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [hereinafter referred to as 'the CIT(A)'] whereby the Ld. CIT(A) had partly allowed the appeal against the intimation/order passed by Deputy Commissioner of Income Tax, CPC under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The solitary issue raised in both the appeals pertains to disallowance made by the Assessing Officer under Section 36(1)(va) of the Act in respect of Employees' Contribution to Provident Fund (PF) and Employees State Insurance Corporation (ESIC). In the appeal filed by the Appellant for the Assessment Year 2018-19 (ITA No. 240/Mum/2022) identical issue was decided in the favour of the Appellant. However, recently, the Hon'ble Supreme Court has, in the case of Checkmate Services Pvt. Ltd. vs. CIT-1: 143 Taxmann.com 178 (SC)/ Civil Appeal No. 833 of 2016, held that the provision of Section 43B of the Act shall not apply to employees' contribution to PF/ESI, and the due date specified under Section 36(1)(va) of the Act shall apply for determination of deductibility of employees' contribution to PF/ESI. Accordingly, in view of the aforesaid judgment of the Hon'ble Supreme Court, the issue in both the appeals are remanded back to the file of the CIT(A) for fresh adjudication after giving the Appellant/Assessee a reasonable opportunity of being heard. Since the issues are being remanded back all the rights and contentions are left open. With the aforesaid directions, the present appeals stand disposed off.

3. In the result, both appeals are allowed for statistical purposes.

Order pronounced on 28.10.2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.10.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai