

आयकर अपीलीय अधिकरण "ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.792/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. DMC Automotive Private Ltd. No.5, Othappai Village, Uthukottai Taluk Odappai B.O, Poondi, Tiruvallur-602 023.	बनाम/ Vs.	The Assessing Officer Corporate Ward-1(4) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AACCD-4671-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri Govindarajan (CA) – Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri ARV Sreenivasan – (Addl. CIT) – Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	26-10-2022
घोषणाकी तारीख / Date of Pronouncement	:	02-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member):

1. In this appeal for Assessment Year (AY) 2017-18, the sole grievance of the assessee is confirmation of disallowance of Employees' Contribution to PF / ESI in terms of Sec.43B r.w.s. 36(1)(va) as well as Sec. 2(24)(x). This issue was hitherto being decided by us in assessee's favor, inter-alia, by relying upon the decision of Hon'ble High Court of Madras in **CIT v. Industrial Security & Intelligence India (P.) Ltd. (TCA No. 585 of 2015, dated 24-7-2015)**. However, now this issue has

been decided by Hon'ble Supreme Court in favor of revenue in its recent decision in bunch of appeals titled as **Checkmate Services P. Ltd. Vs CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022)**. It is admitted position that this decision applies to the facts of case before us. In the above background, the appeal is disposed-off as under. The registry has noted a delay of 1 day in the appeal which stand condoned.

2. The assessee's return was scrutinized u/s 143(3) on 20.12.2019. The Ld. AO made disallowance u/s 36(1)(va) for Rs.14.39 Lacs and reduced the loss declared by the assessee. The said adjustment was made while computing Book Profits u/s 115JB also. The Ld. CIT(A) confirmed the disallowance. Regarding 115JB, Ld. CIT(A) observed that no such disallowance has been made by Ld. AO. Aggrieved, the assessee is in further appeal before us.

3. So far as the reduction of loss in normal provisions is concerned, respectfully following the binding decision of Hon'ble Supreme Court as cited above, the stand of Ld. CIT(A) stand confirmed. The corresponding grounds stands dismissed.

4. The Ld. AR submitted that such a disallowance should not be added while computing Book Profits u/s 115JB. We find that as per provisions of Sec.2(24)(x), the contribution so received by assessee from its employees would become its income and the deduction would be allowed to the assessee if dues are deposited as per the mandate of Sec.36(1)(va). However, Book Profits u/s 115JB means profits as shown in the statement of Profit & Loss Account. The Book Profits are to be further adjusted to the extent as provided in Explanation-1 to Sec.115JB(2). Such an adjustment of employee's contribution has not been envisaged therein. Further, upon receipt of contribution, the

assessee becomes liable to deposit the same and it is reflected as 'current liabilities' for the assessee. The same is added to the income of the assessee in the computation of income and if the assessee deposit the same as per the mandate of Sec.36(1)(va), the deduction of the same is allowed to the assessee. Thus, this amount is not credited to Profit & Loss Account but the adjustment of the same is made in the computation of income. Therefore, this disallowance, in our opinion, would not form part of Book Profits u/s 115JB. We order so. The Ld. AO is directed to verify the same and compute correct Book Profits u/s 115JB. The corresponding grounds stands allowed for statistical purposes.

5. The appeal stands partly allowed for statistical purposes.

Order pronounced on 02nd November, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 02-11-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF