

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 76/Srt/2022 (Assessment Year: 2017-18)

(Physical hearing)

Kanishaka Prints Private Limited, 177/178, GIDC, Pandsera, Surat, Gujarat PIN-394221 PAN No. AABCK 0020 G	Vs.	The Pr.CIT-1, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Sh. Rasesh Shah CA/ AR
Department represented by	Shri Ashok B Koli, CIT-DR
Date of hearing	16/11/2022
Date of pronouncement	22/11/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the learned Principal Commissioner of Income Tax-1, Surat (in short, the Id. Pr.CIT) dated 05/03/2022 passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) for the Assessment year (AY) 2017-18.
2. Brief facts of the case are that the assessee-company filed its return of income for the A.Y. 2017-18 on 28/09/2017 declaring income of Rs. 63.62 lakhs. The case was selected for scrutiny. The Assessing Officer passed the assessment order on 18/11/2019 under Section 143(3) of the Act, without any variation or addition. Subsequently, the assessment order

was verified by the Id. Pr.CIT vide his order dated 05/03/2022 passed under Section 263 of the Act.

3. The Id. PCIT while revising the assessment order, held that the assessee failed to deposit contribution of its employee towards Provident Fund and ESI amounting to Rs. 4,09,391/- within due date prescribed under the relevant statutory provision and was not entitled for deduction under Section 36(1)(va) of the Act. The Assessing Officer allowed the said deduction without making enquiries or verification and allowed the relief to the assessee. Thus, the assessment order is erroneous in so far as it is prejudicial to the interests of the revenue. Aggrieved, the assessee has filed the present appeal before this Tribunal, in challenging the order of Id PCIT under section 263.
4. We have heard the submissions of the learned authorised representative (AR) for the assessee and the Id Commissioner of income-tax-departmental representative (CIT-DR) for the revenue. The Id AR for the assessee submits that the Id. PCIT while revising the assessment order set-aside the whole of the assessment order, which is not permissible unless the assessee is provided opportunity on any other issues. In the show cause notice no other issues was identified or examined by Id PCIT, therefore, his finding to pass the fresh assessment order on the issues which have been considered together with the issue discussed by him, is

uncalled for. The Id AR for the assessee submits that the finding of Id PCIT may be set-aside to that extent.

5. On the other hand, the Id. CIT-DR for the revenue submits that the grounds of appeal raised by assessee is squarely covered against the assessee by the recent decision of Hon'ble Apex Court in the case of Checkmate Services Private Limited Vs CIT in Civil Appeal No. 2833 of 2016 dated 12/10/2022 wherein the Hon'ble Apex Court held that it is an essential condition that for claiming such deduction that such amounts are deposited on or before due date. It was further held that non-obstante clause under Section 43B or in any content in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before due date as a condition for deduction.
6. In the rejoinder submissions, the Id AR for the assessee submits that he is ready to accept the submissions of the Id CIT-DR that the issue of deduction of employee's contribution of ESI & PF is covered by the latest decisions of the Hon'ble Apex Court in Checkmate Services Private Limited Vs CIT (supra), however, the Id PCIT has set-aside the entire assessment without providing opportunity to the assessee, which is the primary condition for exercising jurisdiction under section 263.
7. We have considered the submissions of both the parties and have gone through the orders of lower authorities. We find that the Assessing Officer during the assessment has not discussed the issue with regard to

disallowance of employees' contribution of ESI and PF thereby allowed such deduction without any discussion/assessment order. The Id. Pr.CIT while revising the assessment order clearly held that the Assessing Officer allowed such deduction without making enquiry or verification which should have been made thereby allowed relief without enquiry into the claim and directed the Assessing Officer to pass fresh assessment order in accordance with law.

8. We find that the issue identified by the Id. PCIT is directly covered by the recent decision of Hon'ble Apex Court in Checkmate Services Private Limited Vs CIT (supra) wherein the Hon'ble Apex Court held that it is an essential condition that for claiming such deduction that such amounts are deposited on or before due date. It was further held that non-obstante clause under Section 43B or in any content in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before due date as a condition for deduction. The case laws relied by the assessee in his submission are not helpful to the assessee after the decision of Hon'ble Apex Court in Checkmate Services Private Limited Vs CIT (supra). So far as the objection of Id AR of the assessee that Id PCIT set-aside the entire assessment without providing opportunity to the assessee, which is the primary condition for exercising jurisdiction under section 263. We find merit in the submissions of Id AR for the assessee and direct the assessing officer that while giving effect

to the order of Id PCIT, which we are affirming, the assessing officer will not visit any other issue, which were not the subject matter of consideration of Id PCIT. With these observation, the appeal of the assessee is dismissed.

9. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 22nd November, 2022.

Sd/-

(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 22/11/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Sr. Private Secretary, ITAT, Surat