

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.164/SRT/2022 (AY 2018-19)

(Hearing in Physical Court)

Gangaram Bhavangulam Varma, Rbl/6/161 Manda Colony, Post Manda Sarigam- 396155 PAN : AFVPV 7770 C	Vs	Income Tax Officer, Ward-1 Vapi, 8 th Floor, Fortune Square-II, Above TBZ, Chala, Vapi- 396191
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	None
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	07.12.2022
उद्घोषणा की तारीख/Date of pronouncement	07.12.2022

Order under section 254(1) of Income Tax Act

Per PAWAN SINGH JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of ld. National Faceless Appeal Centre (“NFAC” for short) /Ld.CIT(A)] dated 31.03.2022 for assessment year (AY) 2018-19, which in turn arises out an assessment order passed by National e-Assessment Centre, Delhi under section 143(3) r.w.s. 143(3A) & 143(3B) of the Income Tax Act, 1961 (‘the Act’) vide order dated 06.02.2021. The assessee has raised the following grounds of appeal:-

“1.On appreciation of the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeal) NFAC has erred in confirming the disallowance of Rs.3,34,321/- made by

the learned Assessing Officer on the basis that Employees contribution towards Provident Fund has been deposited late. The action of the Learned Commissioner of Income Tax (Appeal) NFAC is not in accordance with the facts of the case and law and deserves to be deleted.

2. On appreciation of the facts and circumstances of the case and law, the Learned Commissioner of Income Tax (Appeal) NFAC has erred in not considering the judicial decision as relied upon by the Appellant. The action of the Learned Commissioner of Income Tax (Appeal) NFAC is not in accordance with the facts of the case and law and deserves to be deleted.

3. The appellant craves leave to add, amend, modify or alter the above grounds of appeal at any stage of appellate proceedings.”

2. Brief facts of the case that Assessing Officer while passing the assessment order noted that assessee has received employee's contribution on account of Provident Fund of Rs.13,23,310/- out of which Rs.7,00,965/- was not deposited in the respective fund within due date prescribed in the relevant statutory provision. The Assessing Officer issued show cause notice to the assessee for granting opportunity to submit assessee's response. The assessee furnished his reply in ITBA portal, wherein the assessee stated that out of total proposed addition of Rs.7,00,695/-, only Rs.3,34,321/- pertaining to employee's contribution towards Provident Fund was not deposited within due

course of time and assessee furnished copy of relevant challan along with his reply. The assessee in his without prejudiced stated that addition/ disallowances, if any, may be restricted to some of Rs.3,34,321/-. The Assessing Officer accordingly disallowed Rs.3,34,321/- under section 36(1)(va) of the Act.

3. Aggrieved by the addition / disallowance the case of assessee travelled before Ld.NFAC/CIT(A) who upheld the addition made by Assessing Officer following the decision of Hon'ble jurisdictional High Court in the case of Commissioner of Income Tax II vs/ Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100/366 ITR 170/223. Further aggrieved the assessee has filed present appeal before Tribunal.

4. None, appeared on behalf of assessee despite service of notice of hearing through Registered Postal Acknowledgement Due (RPAD) and acknowledgement / AD card received after the service of such notice which is available on record. Today (07.12.2022) as none appeared on behalf of assessee nor filed any adjournment application. None appeared on behalf of assessee on two occasions.

Therefore, I left no option, but to decide the appeal on the basis of material available on record and after hearing Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue.

5. At the outset of hearing, the ld. Sr. DR for the revenue submits that the grounds of appeal raised by the assessee is covered against the assessee by the latest decision of Hon'ble Supreme Court in the case of Checkmate Services P Ltd. Vs CIT-I in Civil Appeal No. 2833 of 2016 dated 12/10/2022, wherein it is held that essential condition for deduction of such amounts are deposited on or before due date (under statutory provisions under such Acts).
6. I have considered the submission of Ld. Sr-DR for the Revenue that there was delay in deposits of employee's contribution of PF. Such contribution was deposited beyond the due date prescribed under the relevant Acts. I find that the grounds of appeal raised by assessee is covered against the assessee by the decision of Hon'ble Supreme Court in Checkmate Services P Ltd. Vs CIT-I (supra) wherein the decision of Hon'ble Jurisdictional High Court in Gujarat State Road Transport Corporation Vs CIT was upheld. The

Hon'ble Supreme Court held that that essential condition for deduction of such amounts are that employee's contributions are deposited on or before due date under statutory provisions under such Acts. It was further held that non *obstante* clause under section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as condition for such deduction. In view of the aforesaid factual and legal position, I do not find any merit in the grounds of appeal raised by assessee and I dismiss the same.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 07/12/2022.

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य **JUDICIAL MEMBER**]

सूत /Surat, Dated: 07/12/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Sr.P.S./Assistant Registrar, ITAT, Surat