

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.173/SRT/2022 (AY 2019-20)

(Hearing in virtual Court)

Jolly Containers Survey No.739/740, Dabhel, Nani Daman, Kalaria, Daman and Diu-396210 PAN No: AAKFJ 0632 M	Vs	Deputy Commissioner of Income-tax, Vapi Circle, Vapi-396191
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Rajnikant V Chaniyari, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	26.12.2022
उद्घोषणा की तारीख/Date of pronouncement	26.12.2022

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 National Faceless Appeal Centre (for short to as “NFAC”)/ld. CIT(A) dated 07.04.2022 for assessment year 2019-20, which in turn arises out assessment order passed by Asst. Director of Income Tax, Centralized Processing Centre (CPC) Bengaluru under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 08.10.2020. The assessee has raised the following grounds of appeal:-

“1. On the facts and in the circumstances of the case in law, the learned Assistant Director of Income Tax (CPC) has disallowed employees contribution to provident fund of Rs.7,87,864 u/s 36(1)(va)

of the Income Tax Act, 1961. The Hon'ble CIT(Appeals) erred in confirming the action of learned ADIT. The learned ADIT (CPC) be directed to delete the incorrect disallowance and reduce the total income accordingly.

2. The Appellant Firm reserves the right to add, alter, modify and delete the above grounds at any time before the disposal of appeal.”

2. Brief facts of the case are that assessee is a partnership firm engaged in the business of manufacturing of plastic moulded products. The return of income for the year under consideration i.e. assessment year 2019-20 was processed by CPC, Bengaluru vide intimation/ order dated 08.10.2020. The CPC while processing the return of income made disallowance of employees' contribution of provident fund amounting to Rs.7,87,864/- as the same was deposited within the due date under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
3. Aggrieved by the disallowance under section 36(1)(va) the assessee filed appeal before Ld. CIT(A). The appeal of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/CIT(A) the assessee contended that the disputed contribution / impugned contribution of Employees' for Provident Fund was paid within before filing its return of income and the same ought to have been allowed as a deduction. The NFAC/CIT(A) after considering the

submission of assessee and report of auditor confirmed the order of CPC as the employee's contribution to the extent of Rs. 7,87,864/- was not credited before due date. The NFAC/CIT(A) confirmed the disallowance under section 36(1)(va) by referring various case law. Aggrieved by the order of NFAC/ ld.CIT(A) the assessee has filed present appeal before the Tribunal.

4. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the orders of lower authorities carefully. At the outset of hearing, Ld. Sr-DR for the Revenue submits that the grounds of appeal raised by assessee in the present appeal is covered by the latest judgment of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I in Civil Appeal No.2833 of 2016 along with other group appeals on similar issue vide order dated 12.10.2022, wherein Hon'ble Apex Court while considering the scheme of Income tax Act and various divergent views of different Hon'ble High Courts, clearly held that it is an essential condition for deduction of Employees' contribution of ESI

and Provident Funds are deposited on or before the due date.

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 deposits the employees' contribution on or before due date as a condition for deduction. The ld. Sr-DR for the Revenue submits that after the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) no further scope for interpretation of various divergent views of different Hon'ble High Courts, is left for further consideration.

5. On the other hand, Ld. AR for the assessee submits that the it is not in dispute that assessee deposited certain part of Employees' contribution of PF after due date prescribed under Provident Fund and Miscellaneous Provisions Act, 1952. However, the same was remitted before the date of filing return of income. The auditor has not given any adverse remark in his Audit report for disallowance of such contribution. The CPC, Bengaluru disallowed the employees' contribution while processing the return of income under section 143(1) by applying provision of section 143(1)(a)(vi). The Ld.AR for the assessee submits that CPC cannot made

such disallowance. The ld AR for the assessee submits that the co-ordinate Bench of Mumbai Tribunal has recently rendered a decision in the case of M/s P R Packaging Service vs. Assistant Commissioner of Income Tax-25(3), Mumbai in ITA No.2376/Mum/2022 dated 07.12.2022, after the judgment of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) held that the judgment of Hon'ble Apex Court was rendered in the context where assessment was framed under section 143(3) and not under section 143(1). Therefore, the disallowance made under section 143(1)(a) is to be deleted as per the order of Hon'ble Mumbai Tribunal in the case of M/s P R Packaging Services (supra).

6. We have considered the rival submission of both the parties and perused the materials available on record and have gone through the orders of lower authorities and the order of Tribunal in P R Packaging (supra) carefully. As noted above, the CPC Bengaluru while processing the return of income for the subject assessment year 2019-20 made a disallowance of Rs.7,87,864/- as the same was deposited before due date. Such facts with the due date for making contribution and the actual date of payment with regard to Rs. 787,864/- is

clearly mentioned in the audit report. The NFAC/CIT(A) confirmed the action of Assessing Officer by referring various decisions of High Courts.

7. We find that latest decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) is squarely covers the issue under consideration and the same is in favour of Revenue. The Hon'ble Apex Court while confirming the decisions of various Hon'ble High Courts of this country, which was favouring the Revenue clearly held that it is an essential condition for deduction of such amount are deposited on or before due date. The Hon'ble Apex Court further clearly held that *non obstante* clause section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employees' contribution on or before the due date as a condition for deduction.
8. In the case in hand, the assessee paid the employees' PF contribution of Rs.7,80,374/- for the month of June, 2018, which was liable to be deposited on or before (due date) 15.07.2018, however, the same was deposited on 04.08.2018. Similarly, another contribution of Rs.7,490/- for

similar period, which was also to be deposited on or before 15.07.2018 was paid on 24.08.2018. Thus, the assessee deposited total sum of Rs.7,87,864/- beyond the due date for making employees' contribution. We find that Section 36(1)(va) clearly prescribed about the other deduction for an amount, any sum received by the assessee from the employees' to which the provision of sub-clause (x) of Clause (24) of Section 2 apply, if such amount is credited by the assessee to the employees' account in the relevant fund or funds on or before the due date. Thus, there is no ambiguity in the provision of section 36(1)(va) and it is clear that such contribution must be credited to the employees' account in the relevant fund on or before the due date.

9. Now, before us the Ld. AR for the assessee relied on the order of co-ordinate Bench of Mumbai Tribunal in the case of M/s P R Packaging Services (supra). On careful reading of this order we find that the co-ordinate Bench of Mumbai Tribunal while granting relief made more emphasis on the disallowance which can be under section 143(3) or the adjustment under section 143(a) and mixed the condition precedent of charging provision with machinery provisions

and perhaps missed the vital part of section 36(1)(va). Therefore, in our considered view, after the decision of Hon'ble Apex Court in Checkmate Services Pvt. Ltd. (supra), the assessee is not eligible for such deduction, if the employee's contribution of PF, if not deposited with in due date in the employee account in the relevant fund. Thus, with utmost regard to the decision of co-ordinate Bench of Mumbai Tribunal in the case of M/s P R Packaging Services (supra) as noted above, the same is passed by ignoring the charging provision of Section 36(1)(va) and is ignored as per the principle of *per inquiriam*.

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

Order pronounced in the open court on 26/12/2022.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER]

Surat, Dated: 26/12/2022

Dkp. Out Sourcing Sr.P.S

Sd/-

(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

Copy to:

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

// True Copy //

By order

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