

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

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5638/MUM/2019
(Assessment Year: 2014-15)

M/s Fino Paytech Limited,
D-507, 2nd Floor, Shree Sawan
Knowledge Park, TTC Industrial Area,
MIDC, Turbhe, Navi Mumbai - 4000705
[PAN:AAACF9869M]

..... Appellant

Vs

Dy. Commissioner of Income Tax,
Circle 9(3)(1),
Room No. 215, 2nd Floor, Aayakar
Bhavan, M.K. Road,
Mumbai - 400020

..... Respondent

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Shri Vivek Perumpura

Date of conclusion of hearing : 13.09.2022
Date of pronouncement of order : 25.11.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 27.06.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 21.10.2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1. The Learned Commissioner of Income Tax (Appeals) has erred both facts and in law in upholding the action of the Assessing Officer in disallowing the expenditure of prior period amounting to Rs. 66,15,000/- allegedly on the ground that the appellant has not brought any records to substantiate its claim.*
3. When the appeal was called for hearing none appeared for the Appellant despite notice. On perusal of the records it was noticed that the appellant had filed written submission. Therefore, we proceeded to hear the Learned Departmental Representative for decide the appeal on merits after taking into consideration the aforesaid written submission.
4. Learned Departmental Representative submitted that the disallowance of INR 66,15,000/- was made by the Assessing Officer on the basis of tax audit report wherein the aforesaid amount was reflected as prior-period item which was not reduced from the expenses claimed as deduction by the Appellant while computing the total income. The CIT(A) confirmed the addition holding that under mercantile system of accounting deduction could not be allowed for prior-period expenses.
5. We have considered the submission of the Learned Departmental Representative and perused the material on record including the written submissions. The disallowance of INR 66,15,000/- was made by the Assessing Officer by holding the same to be prior period expenses. In the written submission, the Appellant has stated INR 66,15,000/- disallowed by the Assessing Officer pertained to contribution of Employee State Insurance Corporation (ESIC) and Provident Fund (PF) paid during the relevant previous year and therefore,

it was claimed that deduction for the same be allowed under Section 43B of the Act on payment basis. As per the provisions of Section 43B of the Act deduction for specified expenses is allowed on payment basis even to an assessee following mercantile system of accounting. This aspect has not been considered/examined by the CIT(A). 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 is remanded back to the file of the CIT(A) for fresh adjudication after taking into account the nature of expense and applicability or otherwise of the provisions of Section 43B of the Act. The CIT(A) shall granted a reasonable opportunity of being heard to the Appellant. Since the issue is being remanded back all the rights and contentions are left open. With the aforesaid directions, the present appeal stands disposed off.

In the result, the appeal is allowed for statistical purposes.

Order pronounced on 25.11.2022.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.11.2022
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