

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.7808/Del./2017
Assessment Year 2003-04

The DCIT, Central Circle-25, New Delhi	vs.	HTL Ltd., GST Road, Guindy, Chennai-600032
(Appellant)		(Respondent)

For Revenue :	Shri Jeetandra Kr. Kale, Sr.DR
For Assessee :	Shri Anuj Jain, CA

Date of Hearing :	28.11.2022
Date of Pronouncement :	05.01.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Revenue is directed against the Order of the Ld. CIT(A)-22, New Delhi, dated 29/09/2017 in Appeal No.108/17-18-CIT(A)-22 relating to the A.Y. 2003-04.

2. The relevant facts as culled from the material on records are as under :

2.1. Assessee is a company which is stated to be engaged in the manufacture and sale of various types of digital electronic telephone exchange equipments etc. Assessee filed its return of income for A.Y. 2003-04 on 27.11.2003 declaring loss of Rs. 16,56,77,673/-. The case of the assessee company was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961 vide order dated 28/02/2006 and the total loss was determined at Rs. 3,39,67,803/- .

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 29.09.2017 in Appeal No. 108/17-18-CIT(A)-22 allowed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal and has raised the following grounds:-

1. *The Ld. CIT(A) has erred in law as well as in facts in deleting the disallowance of Rs. 411.02 Lakhs made by AO on account of provisions made against loss of stock due to damage/obsolete conditions.*

2. *The Ld. CIT(A) has erred in law as well as in facts in deleting the disallowance of Rs. 1,69,90,870/- made by the AO u/s 43B of the IT Act without appreciating the fact that CBDT has issued a circular No. 22/2015 dated 17.12.2015 wherein it has been clearly stated at para 5 as under:*

“It is clarified that this circular does not apply to claim of deduction relating to employees contribution to welfare funds which are governed by section 36(1)(va) of the IT Act. 1961.”

3. *That the grounds of appeal are without prejudice to each other.*

4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal before or at the time of hearing of the appeal.

4. First ground is with respect to deleting the disallowance of Rs. 411.02 lacs. During the course of assessment proceedings A.O. noticed that assessee had claimed loss of Rs. 11,32,12,000/- on account of obsolete/damage stock. The assessee was asked to justify the claim to which assessee *inter alia* submitted that the stock of stores, raw materials, finish goods represent obsolete/damage stocks and have been kept unused for a long period and has lost its useful life. It was further submitted that the stocks as on 31.03.2003 had remained unsold even till 30/09/2005 except for one item of Rs.2,57,052/-. The assessee therefore claimed that the loss of stock due to obsolete/damage should be allowed as business loss. The submissions of the assessee were not found to acceptable to A.O. For the reason that the closing stock should be valued either at cost price or realisable

value; assessee had not discarded those items from the stock and therefore the assessee was not justified in claiming the entire value as loss. The A.O. was further of the view that assessee has only made a provision for writer off stock and it was not an ascertained liability. He accordingly, denied the claim of non-moving inventory to the extent of Rs. 11,32,12,000/- and made its addition.

5. Aggrieved by the order of A.O, assessee carried the matter before the Ld. CIT(A). The Ld. CIT(A) while deciding the issue in favour of the assessee noted that in assessee's own case for the same assessment, year in the order passed u/s. 153C r.w.s. 153A his predecessor had allowed the claim of the assessee. He further noted that his predecessor had given a finding that though the assessee had used the nomenclature as provision for obsolete stock but it was actually write off of stock. He following the order passed by his predecessor while deciding the issue in the order u/s. 153C r.w.s. 153A allowed the claim of the assessee.

6. Aggrieved by the order of Ld. CIT(A) Revenue is now before us.

7. Before us, the Ld. D.R. supported the order of the A.O. The A.R on the other hand reiterated the submissions made before A.O and Ld. CIT(A) and further submitted that on identical facts in assessee's own case for A.Y. 2002-03, the Tribunal vide consolidated order for A.Y. 2000-01, 2002-03 to 2006-07, 2008-09 to 2009-10 dated 14/10/2021 had allowed the claim of the assessee. He pointed to the relevant findings at para 27 of the order. He therefore submitted that since the facts of the present case are similar to that of A.Y. 2002-03 following the order for A.Y. 2003-04, no interference to the order of Ld. CIT(A) is called for.

8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the addition made by the A.O. on account of obsolete stock. We find that Ld. CIT(A) while deciding the issue has noted that Ld. CIT(A) for the same assessment year in assessee's own case had deleted the addition in the

order framed u/s. 153C r.w.s. 153A of the Act. We further find that on identical facts the coordinate bench of the Tribunal while deciding the issue for A.Y. 2003-04 had held that the obsolete inventories were written off by reducing the carrying cost of inventory and the claim was therefore allowed to the assessee.

9. Before us, Revenue did not pointed to any fallacy in the findings of the Ld. CIT(A) nor has pointed to any distinguishing facts of the case in the year under consideration and that of A.Y 2003-04. We therefore find no reason to interfere with the order of the Ld. CIT(A), thus **the ground of the Revenue dismissed.**

10. Ground no. 2 is with respect to the deleting the disallowance of Rs. 1,69,90,870/- being late deposit of PF contribution.

11. During the course of assessment proceedings A.O. noticed that assessee had not remitted the PF dues by the due dates. When the assessee was asked to show cause as to while the same not be disallowed it was submitted that

though the payments have been made belatedly but have been made within the previous year and therefore could not be disallowed u/s. 43B. The submissions of the assessee was not found acceptable to the A.O. The A.O. held the aggregate amount of Rs. 1,69,90,870/- to be not allowable and accordingly made its disallowance.

12. Aggrieved by the order of the A.O. assessee carried the matter before Ld. CIT(A). The Ld. CIT(A) deleted the addition by noting that since all the dues were paid before due date of filing of return the same was allowable.

13. Aggrieved by the order of the Ld. CIT(A) Revenue is now before us.

14. Before us, Ld. D.R submitted that in view of the decision of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. Commissioner of Income Tax reported in [2022] 143 taxmann.com 178 (SC) the belated contribution of PF/ESI is not allowable. The Ld. A.R. on the other hand did not controvert the factual submissions made

by the Ld. D.R but however supported the order of lower authorities.

15. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the disallowance made u/s. 43B on account of delayed contribution of PF/ESI dues. It is an undisputed fact that the PF/ESIC dues which were disallowed by A.O. were not deposited by the assessee before the due date prescribed under the respective statute. We find that Hon'ble Apex Court in the case of Checkmate Services (P.) Ltd. (Supra) has held that employees contribution is money held by the assessee employer in trust and is its income unless paid into the fund by "due date". It has further held that the "due date" is the date prescribed by the enactment governing the fund in question and it is deductible only if it is deposited in respective fund by that date. In the present case since it is undisputed fact that the amount of contribution of PF/ESI has not been deposited before the due date prescribed under the relevant Acts, therefore

following the decision of Hon'ble Apex Court in the case of Checkmate Services (P.) Ltd. (Supra) the same is not allowable. We accordingly, uphold the action of A.O. in disallowing the same. Thus **the ground of the Revenue is allowed.**

16. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open Court on 05.01.2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 05th January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.