

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 160/KOL/2022
Assessment Year: 2019-2020**

***Income Tax Officer,.....Appellant
Ward-2(4), Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713216, West Bengal***

-Vs.-

***Shri Vishnu Khaitan,.....Respondent
M/s. Sagarbhanga Foundry & Engineering,
Naseer Avenue,
Durgapur-713212, West Bengal
[PAN:ALSPK3740Q]***

Appearances by:

*Smt. Ranu Biswas, Addl. CIT, D.R., appeared on behalf of
the Revenue*

N o n e, appeared on behalf of the assessee

Date of concluding the hearing : April 25, 2023

Date of pronouncing the order : April 25, 2023

O R D E R

Per Shri Rajpal Yadav, Vice-President (KZ):-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25th August, 2021 for assessment year 2019-20.

2. The solitary grievance of the Revenue is that Id. CIT(Appeals) has erred in deleting the disallowance of

Rs.2,17,850/- (employees contribution to P.F.) and ESI Rs.63,681/-. This appeal was dismissed on merit by the Tribunal vide its order dated 07.06.2022. Dissatisfied with the order, Revenue filed a Miscellaneous Application bearing No. 53/KOL/2022. The stand of the Revenue was that Hon'ble Supreme Court has reversed the position of law as relied upon by the ld. CIT(Appeals), in the judgment of Checkmate Services Pvt. Limited -vs.- CIT (2022) 143 taxman.com 178 (SC). Relying upon the judgment, Tribunal has allowed the application of the Revenue and restored the appeal to its original number.

3. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of ld. D.R., we have gone through the record carefully. A perusal of the grounds of appeal would reveal that tax effect involved in this appeal is Rs.1,07,471/-. This appeal is not maintainable because of the Department's Circular No. 17 of 2019 issued on 8th August 2019. According to this Circular, the CBDT has prohibited its subordinate authorities to challenge the order of ld. CIT(A) where tax effect by virtue of relief given by the CIT(A) is less than Rs.50 lakhs.

4. No doubt, Tribunal has restored this appeal for fresh adjudication, but we are of the view that at the first instance itself, this appeal should have been dismissed for want of tax effect and it should have not been restored by us on the request

of the Revenue vide M.A. No. 53/KOL/2022. Even if, the decision of the Hon'ble Supreme Court has come but that aspect can only be looked into, if it is found that tax effect is more and order of the Id. CIT(A) is challengeable before the Tribunal. The ITAT has no jurisdiction to go into all these aspects once it is established that tax effect is less than Rs.50 lakhs.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on April 25, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 25th day of April, 2023

Copies to : (1) **Income Tax Officer,
Ward-2(4), Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713216, West Bengal**

(2) **Shri Vishnu Khaitan,
M/s. Sagarbhanga Foundry & Engineering,
Naseer Avenue,
Durgapur-713212, West Bengal**

(3) *Pr. Commissioner of Income Tax, Asansol*

(4) *The Departmental Representative*

(5) *Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.