

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA Nos. 1949 & 1950/MUM/2021
Assessment Years: 2018-19 & 2019-2020

M/s Super Tiles and Marbles
Pvt. Ltd,
904 Marathon Icon, Opposite
Peninsula Corporate Park, Off
Ganapatrao Kadam Marg,
Lower Parel-West,
Mumbai-400013.

PAN No. AAACS 9361 B

Appellant

National Faceless Appeal
Centre (NFAC)
Vs. Mararshi Karve Road, New
Marine Lines, Churchgate,
Mumbai-400020.

Respondent

Assessee by : Mr. Raman Shah, AR
Revenue by : Ms. Richa Gulati, DR

Date of Hearing : 12/04/2023
Date of pronouncement : 26/04/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals are arising on account of Miscellaneous Application order dated 10.02.2023 passed by the Tribunal, recalling the order of Tribunal dated 14.06.2022. Since in both the appeals, grounds raised are common and therefore same were heard together and disposed off by way of this consolidated order



for convenience. The grounds raised in ITA No. 1949/M/2021 are reproduced as under:

“Employees Provident Fund:

a) On the fact and in the circumstances of the case and in law, the CIT(A) - 14 erred in disallowing payment made towards Employees Contribution to Provident Fund after specific due date of Rs. 4,42,200/-.

b) Assessee has deposited the employees contribution to provident fund beyond the time period allowed under the PF Act, however, the said amounts were paid before the " due date " of filing of the return of income by the assessee us - 139(1) of the Act which is in accordance to section 43B of the Act.

c) On the facts and in the circumstances of the case and in law, CIT (A) - 14 erred in considering that context of the amendment to section - 43B would be applicable to employee's contribution as well as employer's contribution.

However, the assessee has relied on the judgements which observed and allowed both the employees and employers contribution would be covered the amendment to Section - 43B of the Income Tax Act, 1961. Therefore, assessee pray for the deletion of the Addition made of Rs. 4,42,200/- made by CIT (A) - 14 Mumbai u/s - 250 of the Income Tax Act, 1961.

2. At the outset, we may like to mention that despite notifying neither anyone attended on behalf of the assessee nor any adjournment was sought. In the facts and circumstances of the case, we were of the opinion that assessee is not interested in prosecuting the appeal and therefore, same was heard *ex-parte* qua the assessee, after hearing the Ld. Departmental Representative (DR).



3. We find that in the case, the Assessing Officer , Central Processing Center (CPC), in the intimation order passed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act'), made adjustment / disallowed the employee's contribution to ESI/PF made after due date under the relevant Acts. On further appeal, The Ld. CIT(A) dismissed the appeal observing as under:

"7. Under these circumstances and following the clarificatory amendments made by the Finance Act, 2021 to section 36(1)(va) and section 43B, the contentions made in the submissions are not found acceptable and the additions of Rs. 4,42,2001-made by AQ, CPC for not depositing of employee's contribution to the PF and ESIC covered under section 36(1)(va) rws 2(24)(x) of "the Act" but paid to the respective funds after the due dates as specified by rules of relevant funds are correctly held as deemed income and, therefore, the disallowance is hereby confirmed as the said late payments are not covered under 43B of the Act. Accordingly, these grounds of appeal are dismissed."

3.1 Though this appeal was allowed by the ITAT vide order dated 14.06.2022, however in view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT reported in 143 taxmann.com 178, the same was recalled.

4. In the grounds raised, the assessee has challenged the disallowance in the view of the earlier decisions and judgment where both the employee and employer contribution were held to be subjected to section 43B of the Act. However, Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) has clearly held that employee's contribution to PF/ESI is subject to



provision of section 36(1)(va) of the Act and therefore, any payment made after due date under the relevant Act is not eligible as deduction for the purpose of Income-tax Act. We further note that in view of decision of the Hon'ble Supreme Court (supra), the claim of deduction is an incorrect claim and which is apparent from the information in the return and therefore, same is liable to be disallowed or to be adjusted u/s 143(1)(a)(ii) of the Act. In view of the above discussion, the grounds raised by the assessee are accordingly dismissed.

5. The grounds raised in the ITA No. 1950/M/2021 are identical and therefore, same are decided mutatis mutandis.
6. In the result, the appeals of the assessee are dismissed.

Order pronounced in the open Court on 26/04/2023.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 26/04/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,



(Assistant Registrar)
ITAT, Mumbai

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	20.04.2023		Sr. PS/PS
2.	Draft placed before author:	20.04.2023		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			