

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G” MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)

ITA No. 388 to 390/MUM/2023
Assessment Year: 2017-18 to 2019-2020

Shreeji Translogistics Ltd.,
Plot No. 107, Shreeji Krupa,
Sector 19-C, Phase-II Vashi,
Thane-400705
PAN No. AAECs 3602 B
Appellant

Vs.

CIT(Appeals),
National Faceless Appeal
Centre,
Delhi.
Respondent

Assessee by : None
Revenue by : Mr. Anil Sant, DR

Date of Hearing : 20/04/2023
Date of pronouncement : 26/04/2023

ORDER

PER OM PRAKASH KANT, AM

These three appeals by the assessee are directed against three separate orders passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre [in short ‘the Ld. CIT(A)’] for assessment years 2017-18 to 2019-2020 respectively. The grounds of appeal raised in these appeals are common/identical and therefore same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.



2. The grounds raised for assessment year 2017-18 are reproduced as under:

“1. Ld. CIT (Appeals) erred in confirming the adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act in the Intimation passed u/s 143(1) of the Act by Ld. Centralized Processing Centre (CPC), Income Tax Department to the tune of Rs. 9,84,475/- being alleged belated payment of Employees contribution to PF & ESIC as the payments were made beyond the due date as specified in the respective PF & ESIC Act.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, the said adjustment to Total Income of the Appellant Company to the tune of Rs. 9,84,475/- u/s 36(1) (va) of the Act is bad in law and ought to be allowed in full while passing Intimation u/s 143(1) of the Act.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, the said adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act which are confirmed by CIT(Appeals) ought to be deleted.

2. Ld. CIT (Appeals) erred in confirming the adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act in the Intimation passed u/s 143(1) of the Act by Ld. CPC, Income Tax Department to the tune of Rs. 9,84,475/- without considering objections/ replies filed by the Appellant Company about non-applicability of provisions of section 143(1)(a)(iv) of the Act & without recording any reasons for its rejection.

Appellant Company submits that relevant clause 20(b) of Audit Report in Form 3CD, nowhere, requires Auditor to report disallowance in clause 20(b) of Form 3CD (Tax Audit Report). In other words, it is only information about due date of Payment and actual date of payment of ESIC and PF dues which is required to be reported by the Tax Auditor.

Appellant Company submits passing Order u/s 250 of the Act without considering objections/replies filed by the



Appellant Company about non-applicability of provisions of section 143(1)(a)(iv) of the Act & without recording any reasons for its rejection is bad in law & deserves to be quashed.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, the said adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act which are confirmed by CIT(Appeals) ought to be deleted.

3. Ld. CIT (Appeals) erred in confirming the adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act in the Intimation passed u/s 143(1) of the Act by Ld.

Centralized Processing Centre (CPC, Income Tax Department to the tune of Rs. 9,84,475/- which are not prima facie in nature.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, only prima face adjustments can be made in the Intimation us 143(1) of the Act and not the issues which need discussion and deliberation, including verification of documents.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, the said adjustment made to Total Income of the Appellant Company u/s 143(1)(a)(iv) of the Act which are confirmed by CIT(Appeals) ought to be deleted.

4. Ld. CIT (Appeals) erred in confirming the adjustment made to Total Income of the Appellant Company u/s 143(1) (a) (iv) of the Act in the Intimation passed us 143(1) of the Act to the tune of Rs. 9, 84,475/- presuming recent judgement of the Hon'ble Supreme Court in the case of M/s Checkmate Services Pvt Ltd vs CIT is applicable to the facts of the present case.

Appellant Company submits that in view of the facts and circumstances of the case as well as in law, the Hon'ble Supreme Court judgement was rendered in the context where assessment was framed under section 143(3) of the Act and not under section 143(1)(a)(iv) of the Act. In other words, the



said Hon'ble Supreme Court judgement does not apply to the Intimation issued u/s 143(1) of the Act.

3. At the outset, we find that despite notifying for the date of the hearing, neither anyone attended on behalf of the assessee nor any adjournment was filed and therefore we were of the opinion that the assessee was not interested in prosecuting these appeals. Accordingly, the appeals were heard ex-parte qua the assessee and after hearing the Ld. Departmental Representative (DR).

4. We find that in the case, the assessee is aggrieved with the adjustment to the returned income made by the Central Processing Centre (CPC), Bangalore in respect of amount of employee's contribution to PF/ESI of Rs.9,84,475/-, which has been upheld by the Ld. CIT(A), in view of the finding of the Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd (supra)**. The relevant finding of the Ld. CIT(A) is reproduced as under:

"4.21 Reference is also made to the judgement dated 12.10.2022 of the Hon'ble Supreme Court in CIVIL APPEAL NO. 2833 OF 2016 in CHECKMATE SERVICES P. LTD.- CIT-1[2022] 143 taxmann.com 178 (SC). After an elaborate discussion, it has decided the issue in favour of revenue by upholding the decision of the Hon'ble Gujarat High Court and finally set the dispute at rest. The A.Y. involved was 2009-10. It was held in Para-54 & 55 of the judgement as under :

"54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the



entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability.

In the case of these liabilities, what constitutes the due date is defined by the statute. nevertheless, the assesses are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law.

They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."

4.1 In the grounds raised, the assessee has challenged the addition that the issue was being of debatable nature so the amount could not be adjusted u/s 143(1)(a)(iv) of the Act. However,



we find that in view of the decision of the Hon'ble Supreme Court, the claim of the assessee regarding employee's contribution to ESI and PF paid after due date prescribed under the relevant Act is an incorrect claim, which is liable for adjustment under the provisions of section 143(1)(a)(ii) of the Act. Before us no submission has been filed on behalf of the assessee contesting the finding of Id CIT(A). Therefore, in our opinion there is no error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. In the result, the grounds raised by the assessee are accordingly dismissed.

5. The issues raised in other two appeals are identical to issues raised in appeal for AY 2017-18 and therefore following our finding in AY 2017-18, the grounds raised in appeals for AY 2018-19 and 2019-20 are dismissed *mutatis mutandis*.

6. In the result, all three appeals filed by the assessee are dismissed.

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

Sd/-
(NARENDER KUMAR CHOUDHRY)
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