

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

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.255/Mum/2023
(Assessment Year: 2020-21)

M/s. Sainik Intelligence & Security Pvt. Ltd. Shoop 25, Suraj Plaza, Chandulal Wadi, Station Road, Bhayander (W), Thane-401 101	Vs.	Asst. DIT, Centralized Processing Centre, Bangalore
PAN/GIR No. AAICS 5302 E		
(Appellant)	:	(Respondent)
Assessee by	:	Ms. Dinkle Haria
Revenue by	:	Shri A. N. Bhalekar
Date of Hearing	:	02.05.2023
Date of Pronouncement	:	04.05.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The assessee has challenged the disallowance of Rs.196,75,747/- towards employees contribution to PF and ESI, made by the Central Processing Centre, Assessing Officer (A.O. for short) u/s. 143(1) of the Act and confirmed by the Id. CIT(A).

3. The brief facts of the case are that the assessee is incorporated under the Companies Act, 1956 and had filed its return of income for the impugned year dated 02.03.2021, declaring total income of Rs.8,02,59,870/-. The A.O./CPC made an adjustment of Rs.1,96,75,746/- u/s. 143(1)(a) of the Act to the total income for the reason

that the assessee has made payment of employees contribution towards PF and ESIC after the due date under the relevant Acts but before the due date for filing of the return of income. The assessee has challenged the impugned disallowance u/s. 36(1)(va) of the Act before the first appellate authority which had confirmed the said addition made by the A.O./CPC by relying on the recent decision of the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd. vs. CIT -I* [2022] 143 taxmann.com 178 (SC).

4. The assessee is in further appeal before us, challenging the order of the Id. CIT(A).

5. The learned Authorised Representative (Id. AR for short) for the assessee contended that the lower authorities have failed to consider the fact that some of the deposits towards PF and ESI were made within the grace period allowed under the respective Acts and also the fact that the assessee has deposited some amount in the immediately following date when the last due date was falling on a public holiday. The assessee contended that the lower authorities have failed to consider this factual aspect while making the impugned disallowance.

6. The learned Departmental Representative (Id. DR for short) for the Revenue on the other hand controverted the said fact and had relied on the decision of the lower authorities.

7. We have heard the rival submissions and perused the materials available on record. The first ground of appeal raised by the assessee was that it was not given sufficient opportunity of hearing before the lower authorities resulting in violation of principle of natural justice. This ground does not require any separate adjudication.

8. Ground no. 2 pertains to the disallowance towards employees contribution, towards PF & ESI which according to the assessee could not have been made u/s. 143(1) of the Act. As this issue has been dealt with extensively by the decision of the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd.* (supra), we find no merit in this ground of appeal raised by the assessee. Hence, this ground of appeal is dismissed.

9. Ground no. 3 pertains to the disallowance of Rs.1,96,75,746/- made u/s. 36(1)(va) of the Act.

10. We find merit in the submission of the ld. AR in seeking for another opportunity to present its case before the A.O. on the limited issue that whether the deposit made towards PF & ESI was within the grace period provided under the relevant Act or in case of public holiday being the last date, the impugned payments were made immediately on the next date of such holiday. The ld. AR relied on the decision of the Tribunal in assessee's case for A.Y. 2018-19. It is also observed that on identical facts, the co-ordinate bench has remitted the issue back to the file of the A.O. for verification of the facts of payments made by the assessee. The assessee is directed to furnish the relevant documentary evidences of payments contended to be made within the due date. We hereby remit this issue back to the file of the A.O. and direct the A.O. to give sufficient opportunity of hearing and to decide the issue on the merits of the case.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.05.2023

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 04.05.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai