

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.298/PUN/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Harshal Subhash Nahar
10 Manisha Colony,
Behind Session Court, Adalat Road,
Aurangabad – 431005

PAN: AFCPN7870A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income-tax,
Circle 1, Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik
Revenue by : Shri Ramnath P Murkunde

सुनवाई की तारीख / Date of Hearing : 03-05-2023
घोषणा की तारीख / Date of Pronouncement : 04-05-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 25-01-2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] for assessment year 2019-20.

2. The only issue is to be decided is as to whether the CIT(A) justified in confirming the disallowance made by the CPC, Bangalore on account of delay in depositing employees' contribution to PF/ESI in the facts and circumstances of the case.

3. We note that the AO, CPC disallowed Rs.30,95,000/- u/s 36(1)(va) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') vide intimation u/s 143(1) of the Act. Having aggrieved, the assessee preferred an appeal before the CIT(A). The assessee contended that the assessee is entitled to claim deduction if the employee's contribution is paid before due dates of filing return of income. The CIT(A) on an examination of Tax Audit Report held that the assessee did not deposit an amount of Rs.30,95,000/- which is employee's contribution towards PF/ESI before the due date under the respective Acts and confirmed the disallowance made by the CPC, Bangalore for delay in depositing the said employee's contribution before due dates concerning the relevant Acts. The ld. DR placed on record the decision of Hon'ble Supreme Court in batch of the appeals, lead case being Checkmate Services P. Ltd. in Civil Appeal No. 2833 of 2016 and submitted that the assessee is not entitled to claim deduction if the employee's contribution is not paid within due dates of respective statutes. On careful reading of the said decision of Hon'ble Supreme Court held that Section 2(24)(x) deems amount received from the employees as income and the amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the

employer (assessee). Further, it held unless the conditions spelt by Explanation to section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date of respective statutes, the assessee is not entitled to claim benefit of deduction from the total income. Therefore, in our opinion, essential condition for claiming such deduction if such amounts are deposited on or before due date of respective statutes. It is evident from the impugned order that the assessee deposited the employee's contribution to PF/ESI after the prescribed due date of relevant Act which is not disputed by the ld. AR. Therefore, following the decision of Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra) we find no infirmity in the order of CIT(A), NFAC, Delhi in holding the assessee is not entitled to claim deduction for its failure to deposit employee's contribution before due date prescribed under the relevant statutes. Thus, the grounds raised by the assessee are fails and it is dismissed.

4. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 4th May, 2023.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 4th May, 2023.
GCVSR

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune