

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकरअपीलसं/I.T.A. No.14/Mum/2023
(निर्धारणवर्ष / Assessment Year: 2011-12)
&
आयकरअपीलसं/I.T.A. No.15/Mum/2023
(निर्धारणवर्ष / Assessment Year: 2018-19)

Spick-N-Span Services 409, 4 th Floor, Sej Plaza, Marve Road Malad (W) Mumbai- 400064	<u>बनाम/</u> Vs.	Income Tax Officer Ward- 41(3)(1) (Erstwhile Ward- 27(3)(3) Kautilya Bhavan, BKC, Mumbai- 400051
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAOFS2733G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Anil Kumar Das. Sr. AR	

सुनवाईकीतारीख / Date of Hearing: 06/03/2023
घोषणाकीतारीख /Date of Pronouncement: 26/04/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee company against the order of the Ld. CIT(A)/NFAC dated 16.11.2022 for AY 2011-12 and AY 2018-19.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the disallowance of Rs. 48,19,696/- for the AY 2011-12 u/s 143(3) of the Income Tax Act, 1961 (herein after 'the Act') and Rs. 1,48,61,729/- (AY 2018-19) u/s 143(1) of the Act, both on account of disallowance of employees contribution of provident fund and ESIC u/s 36(1) (va) of the Act. Since, the issue

are the same, we take up the appeal for AY 2011-12 as the lead case and result of which will be followed for AY 2018-19.

3. Brief facts as noted by the Ld. CIT(A) is that assessee had filled the original return of income on 30-09-2011 declaring total income of Rs. 16,45,005/-. Later the case of the assessee was reopened u/s 147 of the Act on the ground that the assessee failed to deposit the 'employees contribution' to provident fund and ESIC within the *due date* as prescribed by the PF/ESI Act and therefore, the same cannot be allowed as deduction and therefore, such amount has escaped assessment. The AO after taking note of the dates on which *employees contribution* to PF/ESIC has been made in a chart format in the assessment order, he held that assessee failed to depositing the same within due date as prescribed under the PF/ESI Act; and so he disallowed an amount of Rs. 48,19,696/- (Rs. 10,63,208/- and Rs. 37,56,488/-). Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the same by the taking note of the Hon'ble Supreme Court decision in Checkmate Services P. Ltd vs CIT wherein the Hon'ble Supreme Court upheld the action of the Revenue disallowing the claim of deduction of Employee's contribution for failure to remit the same within the *due date* as prescribed under PF/ ESI Act. Thus Ld. CIT(A) noted that issue involved in the appeals were no longer *res-Integra*; and held that the employees contribution to provident fund/ employees state insurance etc are allowable as deduction only if remitted in Government Treasury before the statutory due date as prescribed by the respective statutes (Employees Provident Fund Act and ESI Act). And the Ld. CIT(A) has passed the impugned orders confirming the action of the AO.

4. Aggrieved, the assessee is before us.

5. We have heard the Ld. DR and perused the records. We note that the issue involved in both the appeals are regarding the disallowance made by the AO u/s 143(3) of the Act/intimation u/s 143(1) by the CPC [for AY 2011-12 & AY 2018-19 respectively] whereby, the assessee's claim of deduction of the employees contribution to Provident Fund and ESIC was disallowed, since assessee remitted the same after the due date prescribed by the respective statutes (PF/ESI Act). Further, we note that the Ld. CIT(A) has confirmed the action of the AO in the light of Hon'ble Supreme Court decision in Checkmate (supra); and since the issue is no longer res-Integra, we do not find any infirmity in the action of the Ld. CIT(A) and confirm the action of the Ld. CIT(A) and dismiss both the appeals of the assessee.

6. In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on this 26/04/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 26/04/2023.
Shubham P. Lohar

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकरआयुक्त / CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार / (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**