

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA No. 546/Mum/2023

(A.Y.2020-21)

M/s Jasani India Private Limited, Hw 6010, Tower H,6 th Floor, Bharat Diamond Bourse, BKC, Bandra (East) Mumbai – 400 051	Vs.	National E-Assessment Centre-Delhi, Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACU0081C		
Appellant	..	Respondent

Appellant by :	Sanket Shah
Respondent by :	Vranda U Matkari

Date of Hearing	27.04.2023
Date of Pronouncement	28.04.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 10.02.2023 for A.Y. 2020-21. The assessee has raised the following grounds before us:

- “1. In not holding that the entire processing was done without following the method prescribed u/s 143(1) and that the adjustments made were beyond the scope of that section.*
- 2. In asking the AO to verify whether or not Rs.9,008 of penalty was compensatory in nature - whereas it was already pleaded that this had been offered to tax.*
- 3. In confirming the disallowance of Rs.516,812 being contribution to PF by merely stating that the judgment of the Supreme Court in Checkmate Securities P Ltd applied to the case-without appreciating the submissions that there was no delay in the making of these contributions.”*

2. Fact in brief is that the CPC Bangalore found that assessee has not deposited the employee's contribution towards Provident Fund to the amount of Rs.5,16,812/- to the government account within the due date as prescribed in PF/ESIC Act. Therefore, the CPC has disallowed the amount of Rs.5,16,812/- on account of late deposit of employee's contribution towards PF/ESIC u/s 36(1)(va) r.w.s. 2(24)(x) of the Act to the government account beyond the due date as prescribed in the PF/ESIC Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that issue has reached finality with the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT -1 Civil Appeal No. 2833 of 2016 dated 12.10.2022.

4. Heard both the sides and perused the material on record. The Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT -1 Civil Appeal No. 2833 of 2016 dated 12.10.2022 held that if the employer's did not deposit the amount towards employee's contribution on or before the due date as prescribed in the EPF/ESIC the assessee was not entitled to the deduction. The Hon'ble Supreme Court vide the decision referred as supra set at rest the entire controversy wherein it is held that employer's have to deposit the employee's contribution towards PF/ESIC on or before the due date prescribed in the respective law for availing deduction.

5. However, in the case of the assessee it has submitted that the amount towards employee's contribution to PF/ESI was deposited within the due date as prescribed in the relevant Act. In this regard, the ld. Counsel has referred to clause 20(b) of the tax Audit report showing the detail of the payment made as placed in the paper book. We consider that as per the judgment of the Hon'ble Supreme Court referred supra

it is essential condition for allowing the impugned deduction that such amounts are deposited within the due date as prescribed in the specified Act. Therefore, following the decision of Hon'ble Supreme Court as supra we restore this issue to the file of the AO for deciding afresh after verification of the claim of the assessee that it had deposited the amount within the due date as stipulated in the relevant Act in accordance with decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT -1 Civil Appeal No. 2833 of 2016 dated 12.10.2022. Therefore, the appeal filed by the assessee is treated as allowed for statistical purpose.

Ground No. 2: Amount of penalty of Rs.9,008/-:

6. The CPC has disallowed the amount of Rs.9,008/- pertaining to penalties which was reported under the tax audit report. The same was confirmed by the ld. CIT(A).

7. During the course of appellate proceedings the ld. Counsel has submitted that the impugned amount of penalty has already disallowed by the assessee itself. The ld. Counsel has referred schedule 2 pertaining to statement of income wherein under the head disallowance of expenditure the assessee has already disallowed the amount of penalty.

8. The ld. D.R could not controvert this claim of the assessee based on the relevant supporting documents i.e income tax return acknowledgment and statement of income etc. Therefore, we allow this ground of appeal of the assessee.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.04.2023

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 28.04.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.