

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA No. 280/Mum/2023

(A.Y.2018-19)

Principle Security and Allied Services Private Limited, 707 Hubtown Viva Shankar Wadi, Western Express Highway, Jogeshwari (East) Mumbai – 400060	Vs.	Circle 13(1)(2) Aayakar Bhavan, Ground Floor, M.K. Road, New Marine Lines Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCP2691A		
Appellant	..	Respondent

Appellant by :	Rahul K. Hakani
Respondent by :	V.S. Mahajan

Date of Hearing	18.04.2023
Date of Pronouncement	21.04.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by NFAC, Delhi dated 29.12.2022 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. The ld. CIT(A) erred in not appreciating the fact that the intimation issued by the Id AO CPC Bangalore w/s 143(1) of the Income Tax Act, 1961 is erroneous / without jurisdiction since additions on issues where two views are possible cannot be made.
2. The ld. CIT(A) erred in confirming addition of Rs.1,59,10,546/- u/s 36(1)(va) of the Act without appreciating the fact that the employees contribution to PF and ESIC was deposited before the due date of filing of return.
3. The appellant prays that the adjustment made in the intimation order u/s143(1) of the Act may be deleted.

4. *The appellant craves your honour's leave to add, alter or amend any ground of appeal at the time of hearing or before."*

2. The fact in brief is that assessee has deposited the employee's contribution towards PF/ESIC to the government's account beyond the due date prescribed in the PF/ESIC Act but before the due date of filing the return of income. The CPC Bangalore processed the return of income u/s 143(1) and added the Rs.1,59,10,546/- on account of delay in deposit employee's contribution to EPF & ESI beyond the due date as prescribed in the specified Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). Before the ld. CIT(A) the assessee referred the decision of Hon'ble jurisdictional High Court in the case of Ghatge Patil Transport Ltd. (2015) 53 taxmann.com 141 (Bom) and the decision in the case of CIT Vs. Hind Filter Ltd.(2018) 90 taxmann.com 51 (Bom) and various other decisions. However, the ld. CIT(A) has dismissed the appeal of the assessee following the decision of the Hon'ble supreme Court in the case of Checkmate Services (P) Ltd Vs. CIT (2022) 43 taxmann.com 178 (SC). The ld. CIT(A) dismiss the appeal of the assessee.

4. During the course of appellate proceedings before us apart from the submission made before the ld. CIT(A), the ld. Counsel submitted that out of the amount of Rs.1,59,10,546/- disallowed by the CPC an amount of Rs.94,23,684/- was paid within the 15 days from payment of salary to the employees for financial year 2017-18 and unpaid amount of Rs.12,43,278/- had already been disallowed by the auditor which required to be considered by the Assessing officer.

On the other hand, ld. D.R referred the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vide Civil Appeal No. 2833 of 2016 dated 12.10.2022 wherein it is held that

employer's have to deposit employee's contribution towards PF/ESI on or before the due date as prescribed in the specified Act.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the impugned disallowance u/s 36(1)(va) was made because the assessee had deposited the amount of employers contribution towards EPF and ESI to the government account beyond the due date as prescribed in the EPF Act and the ESI Act but before the due date of filing Income Tax return. We consider that the cases referred by the assessee are of no help in view of the decision of the Hon'ble supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT as supra. In this decision, the Hon'ble Supreme Court held that it is an essential condition for the deduction that such amounts are deposited within the due date prescribed in the specified Act. If the employer did not deposit the amount towards employees contribution on or before the due date as prescribed under the EPF/ESIC Act the assessee was not entitled to the deduction.

6. However, the claim of the assessee filed vide letter dated 15.04.2023 that auditor has already disallowed the unpaid amount as of the due date of PF and ESIC i.e Rs.12,43,378/- and that amount of Rs.94,23,684/- was paid within 15 days from payment of salary to the employees required to be verified/examined by the A.O in accordance with the provisions of law. The Hon'ble Supreme Court in the decision of Checkmate Services Pvt. Ltd. vide Civil Appeal No. 2833 of 2016 dated 12.10.2022 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 under the law. Therefore, following the decision of the Hon'ble Supreme Court as referred supra we restore this issue to the file of the A.O for deciding afresh in accordance with decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vide Civil Appeal No. 2833 of 2016 dated

12.10.2022. Subject to the above terms, the grounds of appeal are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.04.2023

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.04.2023

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.