

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No. 2013/Mum/2021
(A.Y.2018-19)**

S.J.Metal Industries Ground Floor, Jain Estate Jakaria Road, Malad (W) Mumbai – 400 064	Vs.	Central Processing Centre, Bangalore, Judicial Assessing Officer: Ward 21(3)(2) 1 st Floor, Prestige Apha No. 48/1 48/2, Beratenaagrahara Begur, Hosur Rd, Uttaranhalli Hobli Bengaluru Karnataka – 560100
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AATFS6124J		
Appellant	..	Respondent

Appellant by :	Bhupendra Shah
Respondent by :	C.T. Mathews

Date of Hearing	20.03.2023
Date of Pronouncement	24.04.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The ITAT vide order ITA No. 2013/Mum/2021 dated 13.05.2022 has allowed the claim of deduction on the ground that the assessee had deposited the employee's contribution of provident fund before the due date of filing of return of income u/s 139(1) of the Act. Subsequently, vide miscellaneous application no. 333/Mum/2022 the revenue seek to recall the order of the ITAT vide ITA No. 2013/Mum/2021 dated 13.05.2022 for assessment year 2018-19. On the basis of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT Dated 12.10.2022. Thereafter the impugned order was recalled by the ITAT vide order MA. No. 333/Mum/2022.

2. The revenue submitted that Tribunal vide ITA No. 2013/Mum/2021 the claim of deduction u/s 36(1)(va) of Rs.4,26,998/-

for the amount received from employee's contribution to PF/ESIC was allowed following the decision of the ITAT Bangalore M/s B I Worldwide India Pvt. Ltd. Vs. DCIT in ITA No. 423/Bang/2021 dated 04.01.2022 & ITAT Hyderabad in the case of Shri Satish Kumar Singh Vs. ITO vide ITA No. 293/Hyd/2021 dated 23.08.2021 wherein held no disallowance can be made in respect of PF/ESI u/s 36(1)(va) of the Act, if the same are deposited on or before the due date of filing the return of income. 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 the deduction.

3. Heard both the sides and perused the material on record. The Hon'ble Supreme Court vide decision referred 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.

4. During the course of appellate proceedings before me the Id. Counsel referred the decision of coordinate bench in support of claim of deduction. However, I consider that the cases referred by the assessee are of no help in view of the judgment of 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. Therefore, following the decision of Hon'ble Supreme Court I restore this issue to the file of the A.O for deciding a fresh in accordance with the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-I Civil Appeal No. 2833 of

2016 dated 12.10.2022, therefore, the appeal of the assessee is treated as allowed for statistical purposes.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 24.04.2023

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 24.04.2023

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.