

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 629/MUM/2022
Assessment Year: 2018-19

DCIT, Circle-1, Thane Room
No. 22, B-Wing 6th floor, Ashar
IT Park, Wagle Industrial
Estate, Thane(W)-400604.

Appellant

M/s Canterburg Tech-BPO
(India) Pvt. Ltd.,
Plot No. CST-254, 2nd floor,
Thakur Complex Station
Road, Gonvandi,
Mumbai-400088.

Vs.

PAN No. AACCC 8523 B
Respondent

Assessee by : None
Revenue by : Ms. Richa Gulati, DR

Date of Hearing : 25/05/2023
Date of pronouncement : 31/05/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against order dated 27.07.2021 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:

1. *Whether the Ld. CIT(A) has erred in facts and circumstances of the case by giving relief in claim of deduction towards employee's contribution deposited into the Provident Fund and ESIC by the assessee company*

after the due date as specified in the respective Act but before the date of filing of return of income?.

2. Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in allowing relief to the assessee ignoring the contents mentioned in the CBDT Circular No. 22/2015 dated 17/12/2015, which is clarificatory in nature, that the provisions of Sec. 43B include within its ambit only the Employer's contribution to various welfare funds and even if such contribution is not paid within the due date as prescribed in the relevant statute, the same will be allowable as a deduction on the basis of actual payment before the due date for filing the return by the assessee as per section 139(1) of the I. T. Act, 1961, however, as far as the allowability of Employee's contribution to such welfare funds are concerned, they will be solely and exclusively governed by the provisions of Sec. 36(l)(va) without any reference to sec. 43B?

3. Whether on the facts and in the circumstances of the case and in Law. the Ld. CIT(A), has failed to appreciate the fact that the assessee is not entitled to claim deduction with respect to employee's contribution in view of the insertion of explanation 2 to Clause (va) of section, 36(1) and explanation 5 to section 43B of the I. T. Act by the Finance Act of 2021, which are clearly of retrospective nature being the same is of curative/declaratory of the previous law?

2. This appeal was originally dismissed by the Tribunal in order dated 25.05.2022. However, on further Miscellaneous Application filed by the Revenue the order of the Tribunal has been recalled by way of MA No. 30/Mum/2023 dated 13.04.2023, hence came before us for hearing.

3. Despite notifying none attended on behalf of the assessee. No adjournment was also sought on behalf of the assessee. In the circumstances, we were of the opinion that assessee was not interested in responding the appeal and therefore same was heard *ex-parte* qua the assessee.

3.1 The only issue in dispute involved is in respect of disallowance of employees contribution to Provident Fund/Employees State Insurance deposits made after due date under the relevant Act. Since, the issue in dispute has been settled by the decision of the Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd. v. CIT reported in 143 taxmann.com 178** therefore, decision of the Ld. CIT(A) on the issue in dispute is set aside and disallowance made by the Assessing Officer is upheld.

4. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open Court on 31/05/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/05/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai