

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.135/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2018-19)

(Virtual Court Hearing)

Rushi Pravinchandra Raskapoor, Road No.11 Udhna Industries Estate, Surat-394210	Vs.	Principal Commissioner of Income-Tax-1, Surat, Aaykar Bhavan, Majura Gate, Surat- 395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>ABMPR 0305 E</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nitin Gheewala, A.R

राजस्व की ओर से /Respondent by : Shri Ashok B. Koli, CIT-D.R

सुनवाई की तारीख/ **Date of Hearing** : 16/05/2023

घोषणा की तारीख/**Date of Pronouncement**: 06/06/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

By way of this appeal, the assessee has challenged the correctness of the order passed by the Learned Principal Commissioner of Income Tax-1, Surat (in short "ld. PCIT"] dated 16.01.2023, under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for assessment year 2018-19.

2. At the outset, Learned Counsel for the assessee, begins by pointing out that Ld. PCIT has invoked his jurisdiction u/s 263 of the Act on the reason that as per the wage register of assessee, for the period under consideration, that assessee has received an amount of Rs.2,46,500/- as Employee's contribution to ESIC and further an amount of Rs.6,144/- as Employee's contribution to Provident Fund in various months. The table is given in the order of Ld. PCIT on pages-1 and 2 of his order, wherein total ESIC amount is shown at Rs.2,46,500/- and total employee's Provident Fund amount is shown at Rs.6,144/- respectively. The Ld. PCIT noted that Employee's contribution is an income in the hands of the Employers as per section 2(24)(x) of the Act, if it is not deposited by employers

within the time allowed under the Act. Therefore, Assessing Officer was required to make addition of Rs.2,46,500/- on account of Employee's contribution to ESIC and Rs.6,144/- on account of Employee's contribution to Provident Fund, as these respective amounts were deposited by the Employer after the due date prescribed in the Act. However, Ld. Counsel pointed out that Ld. PCIT directed the Assessing Officer to pass fresh assessment on the issues relating to Provident Fund and ESIC and "other issues", which were already considered by Assessing Officer in scrutiny assessment. Therefore such general instruction given by the Ld. PCIT is wrong, these "other issues" were not the subject-matter in the order of Ld.PCIT.

3. On the other hand, Learned CIT-DR for the Revenue submitted that Ld. PCIT has given instruction (in his order passed u/s 263) to the Assessing Officer only to examine the Employee's contribution to ESIC and Employee's contribution to Provident Fund. And for "other issues", the Ld. PCIT has not given any direction to Assessing Officer. Therefore, order passed u/s 263 of the Act by Ld. PCIT does not contain any error. Apart from this, Ld DR submitted that the issue of Employees Provident Fund and ESIC, is squarely covered by the judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I, in Civil Appeal No. 2833 of 2016, dated 12/10/2022, therefore the same may be disallowed.

4. We have heard both the parties and perused the materials available on record. We note that Ld. PCIT has instructed the Assessing Officer observing as follows:

*"9. Accordingly, the assessment order passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 01.02.2021, in the instant case is set aside with a direction to the Assessing Officer to pass fresh assessment order after taking into consideration the issues as may have been already considered together with the issue discussed hereinabove also. Needless to mention that while passing the fresh assessment order, consequent to this order under section 263 of the Act, 1961, the Assessing Officer shall grant reasonable and sufficient opportunity of being heard to the assessee."*

5. From the above direction of Ld. PCIT, we note that Ld. PCIT has given a general direction to Assessing Officer stating that “issues may have been already considered together with the issue discussed hereinabove also”. Therefore, we are of the view, that “other issues” which have been adjudicated by Assessing Officer, which were not the subject-matter of Ld.PCIT’s jurisdiction should not be again verified by Assessing Officer, hence, such type of general direction issued by Ld. PCIT, is bad in law.

6. Therefore, we note that direction given by Ld. PCIT to examine the Employees contribution to ESIC and Employees contribution to Provident Fund are correct, whereas direction given by the Ld. PCIT to examine the “other issues” are incorrect. Hence, we quash the order of Id PCIT passed u/s 263 of the Act on “other issues”. However, we agree with the direction given by Ld. PCIT to the assessing officer to disallow the deduction on account of Employees Provident Fund and ESIC, which was agreed by the Id Counsel for assessee and the same is covered against the assessee by the judgment of Hon`ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs CIT-I, in Civil Appeal No. 2833 of 2016, dated 12/10/2022, therefore the same may be disallowed by the Assessing Officer.

7. Considering the above facts, we direct the Assessing Officer to examine the Employee’s contribution to Provident Fund and ESIC only, as directed by Ld.PCIT and not “other issues”. This ground of assessee’s appeal is partly allowed in above terms.

8. In the result, appeal of the assessee is partly allowed in above terms.

Order is pronounced on 06/06/2023 by placing record on Notice Board.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 06/06/2023

Dkp Outsourcing Sr.P.S

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

**// True Copy //**

Senior Private Secretary / Private  
Secretary /Assistant Registrar, ITAT, Surat