

IN THE INCOME TAX APPELLATE TRIBUNAL
“GUWAHATI BENCH, GUWAHATI
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.19/Gau/2022
Assessment Year: 2019-20

Datamation Services..... Appellant
First Floor, Seventh Heaven Complex,
G S Road, Ulubari,
Guwahati, Kamrup,
Assam-781007.
[PAN: AAefd2397K]

vs.

ACIT, Circle-1, Guwahati..... Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri N. T. Sherpa, JCIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 06, 2023

Date of pronouncing the order : June 06, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.04.2022 of the National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] passed u/s 250 of the Income Tax Act (hereinafter referred to as the ‘Act’).

2. The sole issue involved in this appeals is relating to the disallowance made by the Assessing Officer/Central Processing Centre (CPC) u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on account of delayed deposit of employees’ contribution to PF/ESI i.e. after the due date as provided under the respective welfare enactments.

3. The Id. Counsel for the assessee namely Shri Uttam Kumar Borthakur vide letter dated 03.06.2023 has fairly agreed that the issue raised by the assessee has come to rest by the recent verdict of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022 wherein it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed even though deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961. The Hon'ble Supreme Court has held that by virtue of section 2(24)(x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2(24)(x), unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. The Hon'ble Supreme Court held that there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

5. In view of above discussion, we do not find any merit of the appeal of the assessee and the same is hereby dismissed.

6. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 6th June, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 06.06.2023.

RS

Copy of the order forwarded to:

1. Datamation Services
2. ACIT, Circle-1, Guwahati
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches