

आयकरअपीलीयअधिकरण, विशाखापटणम "एसएमसी"पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.90/Viz/2023
(निर्धारण वर्ष / Assessment Year : 2020-21)**

Madhu Construction Company
Plot No.3, Phase 1, STBL
Sitarama Gardens
Sattivanipalem, Sheelanagar B.O
Visakhapatnam
[PAN : AAKFM5907E]

Vs. Income Tax Officer
Ward-2(5)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri Sankar Pandi, DR
सुनवाई की तारीख / Date of Hearing : 22.05.2023
घोषणा की तारीख/Date of Pronouncement : 20.06.2023

आदेश /O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1048609798(1) arising out of assessment order passed u/s 154 of the Income Tax Act, 1961 (in short 'Act') dated 26.04.2022 for the Assessment Year (A.Y.) 2020-21.

2. Brief facts of the case are that the assessee company, a partnership firm, deriving income from business filed its return of income u/s 139(1) of the Act for the A.Y.2020-21 on 15.01.2021, declaring a total income of Rs.5,36,531/-. However, Centralized Processing Centre (CPC) had served an order dated 26.04.2022, assessing the total income at Rs.16,68,901/- and raising a tax demand inclusive of interest amounting to Rs.3,53,300/- being adjusted from refund of Rs.3,45,529/- and balance of 7,771/- demand payable. The CPC had disallowed a sum of Rs.11,32,370/- being late payment of employee contribution of PF amounting to Rs.10,75,308/- and ESI amounting to Rs.57,062/- and treated the same as business income.

3. Aggrieved by the order of the CPC, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A), relying on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1, dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

The order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (herein after referred to as "CIT(A)") is bad and unsustainable in the eyes of law as the same is passed without proper application of mind, as it is also contrary to

the spirit and provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

The only dispute in this appeal is the addition of Rs.11,32,370/- made by the CIT(Appeals) National faceless assessment center, towards disallowance of employee's contribution to PF & ESI. The appellant submits that though the amount could not be paid within the due dates under the PF Act and ESI Act, the same were paid before the due date of filing the return u/s 139(1) of the Act. Thus, the appellant submits that the amount is allowable u/s 43B of the Act.

The above contention of the appellant is duly supported by the jurisdictional ITAT Order dt.30.09.2017 of the hon'ble ITAT, Visakhapatnam in the case of Eastern Power Distribution Company of AP Ltd in ITA No.374/Viz/2017. The appellant submits that the disallowance is not warranted as the issue is squarely covered by the aforesaid decision of the hon'ble ITAT, Visakhapatnam Bench.

5. None appeared on behalf of the assessee or the assessee has not filed any written submissions.
6. Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal filed by the assessee.
7. I have heard the Ld.DR. Now the law is settled after a view had been taken by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., in Civil Appeal No.2833 of 2016, order dated 12.10.2022. In the case on hand also, the assessee made remittances before filing the return of income u/s 139(1), but not within the due date specified by the

respective PF / ESI Acts. The orders relied by the assessee were passed before the order in the case of Checkmate Services Pvt. Ltd., was passed by the Hon'ble Supreme Court supra, hence, not applicable to the assessee's case. Therefore, I have no hesitation to come to a conclusion that the disallowance made by the AO as well as the Ld.CIT(A) needs no interference in view of the decision of the Hon'ble Supreme Court mentioned supra.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 20th June, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated :20.06.2023
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Madhu Construction Company, Plot No.3, Phase 1, STBL, Sitarama Gardens, Sattivanipalem, Sheelanagar B.O, Visakhapatnam
2. राजस्व/The Revenue - The Income Tax Officer, Income Tax Office, Ward-2(5), Infinity Towers, Malkapuram, Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam