

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 71/Mum/2023
(Assessment Year: 2017-18)

M/s. Mustang Enterprises 219 Milan Industrial Estate, T J Marg, Cotton Green, Mumbai-400 033	Vs.	ITO, Circle-20(1) Mumbai
PAN/GIR No. AAAFM 4887 H		
(Appellant)	:	(Respondent)
Assessee by	:	Ms. Rupal Shah
Revenue by	:	Smt. Mahita Nair
Date of Hearing	:	16.03.2023
Date of Pronouncement	:	13.06.2023

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has challenged the solitary ground of disallowance amounting to Rs.3,87,955/- on employees contribution towards PF & ESIC deposited after the due date prescribed under the relevant Act but before filing of the returns u/s. 139(1) of the Act.

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of manufacturing of various types of socks and allied accessories. The assessee had filed its return of income dated 30.10.2017, declaring total income at Rs.82,38,650/-.

The A.O. / CPC made a disallowance u/s. 36(1)(va) of the Act as being employees contribution towards PF & ESIC paid by the assessee after the due date prescribed under the relevant Acts but before filing of the return of income.

4. Aggrieved, the assessee was in appeal before the Id. CIT(A) who confirmed the impugned addition made by the A.O/CPC by placing reliance on the decision of the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd. vs. CIT* [2002] 143 taxmann.com 178 (SC).

5. The assessee is in appeal before us, challenging the impugned order.

6. We have heard the rival submissions and perused the materials available on record. It is evident that the assessee has deposited the impugned addition made u/s. 36(1)(va) of the Act being the employees contribution towards PF & ESIC after the due date prescribed under the relevant Acts nevertheless paid before the due date for filing of the returns u/s. 139(1) of the Act. All the grounds raised by the assessee pertain to the impugned disallowance towards delayed payment of PF & ESIC. Pertinently all these issues raised by the assessee in its ground of appeals are covered by the decision of the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd.* (supra), wherein it was held that the delayed payment of employees contribution towards PF & ESIC will not be an allowable deduction and that section 43B of the Act does not cover employees contribution and the same relates to only employer's contribution towards PF & ESIC. Since this issue has been settled by the highest forums, it becomes the law of the land. Therefore, we find no infirmity in the order of the Id. CIT(A) in relying on the

proposition laid down by the Hon'ble Apex Court in the case of *Checkmate Services (P.) Ltd.* (supra). Hence, the grounds raised by the assessee are dismissed.

7. In the result, the appeal filed the assessee is dismissed.

Order pronounced in the open court on 13.06.2023

Sd/-

Sd/-

(B R Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 13.06.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai