

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच ", मुंबई
श्री बी.आर बास्करण, लेखाकार सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H ", MUMBAI
BEFORE SHRI B.R.BASKARAN , ACCOUNTANT MEMBER &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
M.A NO.159/MUM/2023
[Arising out of ITA NO.1325/MUM/2022 (A.Y.2019-20)]

ACIT-4(3)(1),
Room No.649, Aaykar Bhavan, M.K.Road,
Mumbai – 400 020 प्रार्थी /Applicant

बनाम Vs.

M/s. KA. Hospitality Pvt. Ltd.
327, F.Wing Kanakia Zillion, LBS Road,
Kurla West, Mumbai 400 070.
PAN:AADCK-9508-M प्रतिवादी/Respondent

आअसं.1325/मुं/ 2022 (नि.व.2019-20)
ITA NO.1325/MUM/2022 (A.Y.2019-20)

M/s. KA. Hospitality Pvt. Ltd.
327, F.Wing Kanakia Zillion, LBS Road,
Kurla West, Mumbai 400 070.
PAN:AADCK-9508-M अपीलार्थी /Appellant

बनाम Vs.

Income Tax Department – CPC ,
Bangalore. प्रतिवादी/Respondent

Revenue by : Shri Soumendu Kumar Dash,
Assessee by : Shri A.N.Shah

सुनवाई की तिथि/ Date of hearing : 02/06/2023
घोषणा की तिथि/ Date of pronouncement : 02/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This Miscellaneous Application has been filed by the Department seeking rectification in the Tribunal order dated 25/082022 vide which appeal of the assessee in ITA No.1325/Mum/2022 for assessment year 2019-20 was decided.

2. Shri Soumendu Kumar Dash representing the Department submitted that the assessee in appeal had assailed the findings of CIT(A) in disallowing Employees contribution of Provident Fund(PF) and Employees State Insurance Contribution (ESIC) as the said amount was deposited by the assessee after due date as specified under the relevant Acts i.e. Provident Fund Act and Employees State Insurance Act, 1948. The Id. Departmental Representative submitted that the Hon'ble Supreme Court of India in the case of Checkmate Services India (Pvt.) Ltd. vs. CIT, 448 ITR 518 has held that Employees contribution towards PF and ESIC after due date under the respective Acts is not allowable as deduction.

3. Per contra, Shri A.N.Shah appearing on behalf of the assessee vehemently opposed the Miscellaneous Application. The Id. Authorized Representative for the assessee /respondent submitted that in assessee's case assessment was framed u/s. 143(1) of the Income Tax Act, 1961 [in short 'the Act'], whereas, in the case of Checkmate India (Pvt.) Ltd. vs. CIT(supra) the assessment was framed u/s. 143(3) of the Act. Therefore, the ratio laid down by the Hon'ble Supreme Court of India would not apply in the case of

assessee. To support his contention, he placed reliance on the decision in the case of Kalpesh Synthetics Pvt. Ltd. vs. DCIT, 195 ITD 142(Mum-Trib).

4. We have heard the submissions made by rival sides. The Hon'ble Supreme Court of India in the case of Checkmate India (Pvt.) Ltd. vs. CIT(supra) in an unambiguous manner has clarified that Employees contribution deposited beyond due date as specified under the relevant Acts would not be eligible for deduction u/s. 36(1)(va) of the Act.

5. In light of the decision in the case of Checkmate India (Pvt.) Ltd. Vs. CIT (supra), order dated 25/08/2022 is recalled and appeal of the assessee is restored to its original number.

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6. With the consent of both sides, appeal of the assessee is taken up for hearing. The contention of Authorized Representative for the assessee is that the decision in the case of Checkmate India (Pvt) Ltd.(supra) is distinguishable, as in the said case assessment was made u/s. 143(3) of the Act, whereas in the case of assessee it is u/s. 143(1) of the Act. Once, it is evident from the records that payments in respect of employees contribution to PF and ESIC has been made beyond the "due date" as specified under the respective laws, the same has to be disallowed u/s 36(1)(va) of the Act. A perusal of section 143(1)(a)(ii) of the Act makes it clear that adjustment can be made in respect of an incorrect claim made that is apparent from the information in the return. The mandatory requirement before making adjustment is that intimation has to be given to the assessee. It is not disputed by the assessee that before making adjustment u/s. 143(1)(a) of the

Act, notice was served on the assessee. Thus, disallowance was made after following due procedure under the Act. The distinction put across by the Id. Authorized Representative for the assessee is devoid of any merit.

7. We deem it appropriate to restore the issue to the file of Assessing Officer for denovo adjudication in the light of the judgment of Hon'ble Supreme Court in the case of Checkmate India (Pvt.) Ltd. (supra). The Assessing Officer shall grant reasonable opportunity for making submissions to the assessee, in accordance with law.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on Friday the 2nd day of June,2023.

Sd/-

(B.R. BASKARAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 02/06/2023
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) ITAT, Mumbai