

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI ABY T VARKEY, JM &

SHRI GAGAN GOYAL, AM

I.T.A. No. 1722/Mum/2021
(Assessment Year: 2017-18)

M/s Stock Holding Corporation of India Ltd., 301, Centre Point, Dr. Babasaheb Ambedkar Road, Parel, Mumbai-400012.	बनाम/ Vs.	ACIT-4(2)(1), Room No. 642, 6 th floor Aayakar Bhavan, M.K. Road, Mumbai-400020.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCS 1429 B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Manish Ajudiya, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akram Khan, AR

सुनवाई की तारीख / Date of Hearing	:	16/06/2023
घोषणा की तारीख / Date of Pronouncement	:	26/06/2023

आदेश / ORDER

Per Gagan Goyal, Accountant Member:

This appeal by the assessee was adjudicated on 03.08.2022 however same has been recalled by way of the order dated 26.06.2023 in Miscellaneous Application No. 220/Mum/2023 and therefore, both the parties were again heard on the ground raised in the appeal. The relevant grounds of appeal are reproduced as under:

S.No.	Grounds of Appeal	Tax effect relating to each Ground of Appeal (Rs.)
1	The Commoner of come tax (Appeals) National Faces Appeal Centre erred in passing the order without granting opportunity of being heard to the Appellant.	
2	The Appellant submits, had the CITA) granted opportunity of being heard, the Appellant would have demonstrated that the employees contribution to Provident Fund of Rs. 37,59,169/- for the month of December, 2016 was deposited within the extended due date prescribed by EPFO.	
3	Both the lower authorities erred in disallowing under Section 36(1)(va) employees' contribution to Provident Fund, late payment of employees' contributions to ESIC and labour welfare fund aggregating to Rs.38,18,955/-.	11,45,686 (Excluding surcharge and education cess)
4	Both the lower authorities erred in making a disallowance under Section 36(1)(va), on a debatable issue, vide intimation under section 143(1)(a).	
5	Both the lower authorities failed to consider that the payment of employees' contribution to ESIC and labour welfare fund was made before the due date of filing the Return of Income.	
6	Both the lower authorities erred in ignoring the binding decisions of the jurisdictional Bombay High Court.	
7	Having regards to the facts and circumstances of the case, the disallowance of Rs 38, 18,955/- needs to be deleted.	

2. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The issue in dispute involved in the appeal is in respect of disallowance of employee's contribution to PF/ESI paid after the due date under the relevant enactment. The Ld. Computerized Processing Centre (CPC) made adjustment for the said disallowance in the

order u/s 143(1) of the Act on the basis of the reporting by the assessee in the tax audit report filed along with the return of income.

3. Before us, it was claimed by the assessee that since disallowance of employee's contribution to PF/ESI was earlier being allowed by the Hon'ble Jurisdictional High Court and therefore, disallowance was a debatable nature and it should not be adjustment u/s 143(1) of the Act.

3.1 We find that the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) has held that employees contribution to PF/ESI paid after the due date under the relevant enactment is not eligible for deduction u/s 36(1)(va) of the Act. This interpretation of the provision of the law by the Hon'ble Supreme Court is effective, since its inception; therefore, issue is no longer debatable. In terms of section 143(1) (a) (ii) of the Act, any incorrect claim which is apparent from any information the return of income, is liable to be adjusted u/s 143(1) of the Act. Since in the case, the claim of employee's contribution paid to PF/ESI after due date under the relevant Act is apparent from the information in tax audit report filed alongwith the return of income and thus, the claim is incorrect. The Ld. CIT (A) is correct in upholding the order of the Ld. CPC in making the said adjustment u/s 143(1) of the Act. Accordingly, we uphold the same. The grounds of appeal of the assessee are accordingly dismissed.

3.2 Although though, in its rejoinder against MA filed by the Revenue assessee submitted that in the year under consideration the EPFO Department issued a Circular dated 12.01.2017 attached vide page No. 13 of rejoinder and allowed a grace period of five days for the month of December 2016 and new due date as per this Circular was 20.01.2017 instead of 15.01.2017.

3.3 On merits, we dismiss the appeal of the assessee with a rider that jurisdictional AO is to verify the contention of the assessee as mentioned in para 3.2 above and allow the relevant claim of the assessee considering the Circular of EPFO (supra).

4. In the result, the appeal filed by the assessee is dismissed in above terms.

Order pronounced in the open court on 26.06.2023.

Sd/-
(Aby T Vakey)
(Judicial Member)

Sd/-
(Gagan Goyal)
Accountant Member

Mumbai; दिनांक Dated: 26.06.2023

Rahul Sharma.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai