

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1541/MUM/2022
Assessment Year: 2018-19

M/s Rajco Metal Industries Pvt.
Ltd.,
19, Oriental Insurance Building,
31, Dr. V.B. Gandhi Marg, Fort,
Mumbai-400023.

PAN NO. AAACR 5185 N
Appellant

Vs.

The DCIT, CPC Bangalore,
Post Bag No. 2, Electronic City
Post Office, Bangalore-560500.

Respondent

ITA No. 1897/MUM/2021
Assessment Year: 2019-2020

M/s Rajco Metal Industries Pvt.
Ltd.,
19, Oriental Insurance Building,
31, Dr. V.B. Gandhi Marg, Fort,
Mumbai-400023.

PAN NO. AAACR 5185 N
Appellant

Vs.

The Assessing Officer -2(3)(1),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Sanjay Parikh
Revenue by : Ms. Indira Adakil, DR

Date of Hearing : 05/07/2023
Date of pronouncement : 10/07/2023

ORDER

PER OM PRAKASH KANT, AM

These appeals filed by the assessee were adjudicated earlier however has been recalled by the Tribunal vide MA No.



175/Mum/2023 dated 17.05.2023 and MA No. 176/Mum/2023 dated 26.05.2023 in view of decision of the Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd. v. CIT in 143 taxmann.com 178 (SC)**.

2. Both these appeals being connected with the same assessee, same were heard together and disposed off by way of this consolidated order for convenience.

3. The grounds raised by the assessee in the appeal for assessment year 2018-19 are reproduced as under:

“A. Confirming the adjustment u/s. 143(1)(a) with respect to Employee's Contribution to Provident Fund of Rs. 18,09,941/- and Employee's Contribution to ESIC of Rs. 1,84,284/-

1. The learned CIT(A) erred on facts and in law in confirming the adjustment made by the AO u/s. 143(1)(a) with respect to Employee's Contribution to Provident Fund amounting to Rs. 18,09,941/- and Employee's Contribution to ESIC amounting to Rs. 1,84,284/-, both paid before due date for filing the return of income..

2. The appellant prays that the adjustment made by the AO u/s. 143(1)(a) on account of Employee's Contribution to Provident Fund amounting to Rs.18,09,941/- and Employee's Contribution to ESIC amounting to Rs. 1,84,284/-and confirmed by the CIT(A), may be deleted.

3.1 The grounds raised by the assessee in assessment year 2019-2020 are reproduced as under:

A. Principles of Natural Justice Violated



1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [CIT(A)] erred on facts and in law in passing the order us. 250 without affording a reasonable and sufficient opportunity of being heard to the appellant.

2. The learned CIT(A) failed to appreciate that the appellant was prevented by a reasonable and sufficient cause from furnishing their reply in connection with their appeal due to non-receipt of notices due to Covid Pandemic and Income Tax System transition and no adverse inference was called for on that account.

3. As the learned CIT(A) has passed an order without affording a reasonable and sufficient opportunity of being heard, the appellant prays that the order of the CIT(A) may be set aside and the CIT(A) may be directed to pass a fresh order after giving a reasonable and sufficient opportunity of being heard to the appellant.

B. Confirming the adjustment us. 143(1)(a) with respect to Employee's Contribution to Provident Fund and ESIC - Rs. 21,06,189/-

4. Without prejudice to the above, the learned CIT(A) erred on facts and in law in confirming the adjustment made by the AO w/s. 143(1)(a) with respect to payment of Employee's Contribution to Provident Fund and ESIC of Rs.21,06,189/- without appreciating that the same was paid before the due date for filing the return of income.

5. The learned CIT(A) failed to appreciate that the issue regarding allowability of Employee's Contribution to Provident Fund and ESIC was a debatable issue and the hon'ble Jurisdictional High Court had decided the issue in favour of the appellant and hence no adjustment on that account could be made u/s.143(1)(a).

The appellant prays that the adjustment made by the AO u/s. 143(1)(a) On account of Employee's Contribution to Provident Fund and ESIC of Rs.21,06, 189/- and confirmed by the CIT(A), may be deleted.



Without prejudice to the above, the learned CIT(A) erred in not allowing the Employee's Contribution to Provident Fund and ESIC which was paid by the appellant within the grace period available under the said Acts.

4. Before us, the Ld. Counsel of the assessee submitted that prior to the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) the issue of disallowance of employee's contribution to Provident Fund/ESI was debatable nature and no addition could have been made u/s 143(1) of the Act.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) has explained the position of the law which was operative from the date on which said provisions were introduced in the Act and in view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra), the claim of the assessee falls in the nature of incorrect claim as provided u/s 143(1)(a)(ii) of the Act , liable for disallowance u/s 143(1) of the Act, , therefore arguments of the Ld. Counsel of the assessee are accordingly rejected and grounds of appeal of the assessee are dismissed.

5.1 The ground raised in assessment year 2019-2020 are identical , hence following our finding in AY 2018-19 , the ground raised by the assessee are dismissed.



6. In the result, the both the appeals of the assessee are dismissed.

Order pronounced in the open Court on 10/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai