

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1323/Mum./2023**  
(Assessment Year : 2019-20)

Complete Solutions Facility  
Management Pvt. Ltd.  
B-301, Golden Guild Sunder Nagar  
Golden Square Society, Sunder Nagar  
Santacruz (East), Mumbai 400 098  
PAN - AACCC7173P

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circular-14(1)(2), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Shri Ashok Kumar Ambartha

Date of Hearing - 06/07/2023

Date of Order - 17/07/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 28/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2019-20.

2. When the present appeal was called for hearing neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. We find that vide letter dated 04/07/2023 the learned Authorised

Representative ("*learned AR*") of the assessee has filed written submissions and requested that same be considered while deciding the present appeal. Therefore, in view of the above, we proceed to dispose off the present appeal after hearing the learned Departmental Representative ("*learned DR*") and considering the written submissions filed on behalf of the assessee.

3. In the present appeal, the assessee has raised the following ground:-

*"1 On the facts and in the circumstances of the case and in law, the assessee prays Your Honour to kindly set aside matter back to the file of Id. AO for verification of payment of Rs.15,21,934% of Employers Contribution to ESIC on or before due date of furnishing return of income.*

*2. The assessee craves Your Honour leave to add or alter or amend or delete any of the above grounds."*

4. The brief facts of the case, as emanating from the record, are: The assessee is engaged in the business of housekeeping and resource-providing services. For the year under consideration, the assessee filed its return of income on 09/10/2019, declaring a total income of Rs. 1,89,81,298. The assessee subsequently revised the return of income on 02/03/2020, declaring the same income as was originally returned. The return filed by the assessee was processed vide intimation dated 06/07/2020, issued under section 143(1) of the Act computing the total income of the assessee at Rs. 2,19,57,520, inter-alia, after making disallowance of Rs.29,76,223, under section 36(1)(va) of the Act.

5. Vide impugned order, the learned CIT(A) dismissed the appeal filed by the assessee following the decision of the Hon'ble Supreme Court in

Checkmate Services Pvt. Ltd. v/s CIT, [2022] 448 ITR 518 (SC). Being aggrieved, the assessee is in appeal before us.

6. Vide its written submission dated 04/07/2023, the learned AR submitted that in the tax audit report, the tax auditor mistakenly mentioned the combined amount of payment made towards employer's contribution and employees' contribution to ESIC under section 36(1)(va) of the Act. The learned AR further submitted that the payment of employer's contribution of Rs. 15,21,934, towards ESIC was made before filing the income tax return and therefore the same is allowable under section 43B of the Act. The learned AR further submitted that vide intimation issued under section 143(1) of the Act the entire sum of Rs. 29,76,223, which includes both payments of employer's contribution and employees' contribution to ESIC was disallowed under section 36(1)(va) of the Act.

7. On the other hand, the learned DR vehemently relied upon the orders passed by the lower authorities.

8. We have considered the submissions of both sides and perused the material available on record. In view of the submissions made by the learned AR, we deem it appropriate to remand the issue arising in the present appeal to the file of the AO for *de novo* adjudication after necessary verification of the payments made towards employer's contribution and employees' contribution to ESIC. We further direct that if upon verification the payment towards employer's contribution to ESIC is found to have been made before the date of filing the return of income then the same be allowed under section 43B of the

Act in light of the decision of Hon'ble Supreme Court in CIT v/s Alom Extrusions, 319 ITR 306 (SC).

9. Insofar as the payment towards employees' contribution to ESIC is concerned, we find that the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra) held that the payment towards employees' contribution to P.F./E.S.I.C., after the due date prescribed under the relevant statute is not allowable as a deduction under section 36(1)(va) of the Act. Thus, the payment towards employees' contribution to ESIC be examined in the light of the aforesaid decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra) and if upon verification are found to be paid beyond the due date prescribed under the relevant statute then the same be disallowed under section 36(1)(va) of the Act.

10. The learned AR placed reliance upon the decision of the Tribunal in P.R. Packaging Services Ltd. v/s ACIT, in ITA no. 2376/Mum./2022, in its written submission, to support the claim of deduction of delayed payment of employees' contribution to ESIC. We find that the Tribunal vide subsequent decision in Nissan Enterprises Ltd. v/s DCIT-CPC, in ITA no.3270/Mum./ 2022, vide order dated 17/02/2023, after considering the aforesaid decision in P.R. Packaging Services Ltd. (supra) decided the issue in favour of the Revenue by following the aforesaid decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra).

11. Therefore, in view of our aforesaid directions, the ground raised by the assessee is allowed for statistical purposes.

12. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/07/2023

**Sd/-**  
**S. RIFAUH RAHMAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 17/07/2023**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai