

**OOIN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.326/Bang/2023
Assessment Year: 2018-19

M Krishnamurthy, No.140, Near Shobha Sapphire Apartment, Tala Cauvery Layout, Amruthahalli, Shankar Nagar (P), Bangalore – 560 092. PAN No. – AXCPK 2486R	Vs.	The Asst. Director of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Umesh P Jain, C.A
Respondent by	:	Shri Nischal B, Addl. Addl. CIT (DR)

Date of Hearing	:	11.07.2023
Date of Pronouncement	:	19.07.2023

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order passed by the NFAC, New Delhi vide order DIN - ITBA/NFAC/S/250/2022-23/1050041632(1) dated 23/02/2023 u/s 250 of the Income-tax Act for the assessment year 2018-19 for dismissing the appeal of the assessee by observing that the assessee did not pay the employee's contribution to PF/ESI within the due date as per the respective Act and confirming the order passed by the AO relying on the judgment of the

Hon'ble Supreme Court in the case of Checkmate Pvt. Ltd. Vs. CIT in Civil Appeal No.2833 of 2016.

2. The Id.AR of the assessee submitted that the CPC as well as the Id.CIT(A) has not accepted the expenditure claimed towards payment of PF/ESI deposited before filing of the income-tax return as per sec.43B of the Act and he further submitted that salary due was paid in the following month and the PF & ESI contribution were deposited immediately within the same month/following month in which employees contribution were received, e.g., the salary for the month of April was paid in May i.e., following month , accordingly the employees contribution towards PF & ESI were received by the assessee in the month of May and therefore the due date for deposit of employees PF/ESI contribution is June, 15th. Unless the employees contribution is not received from the employees, the assessee cannot make payment to the respective funds towards employees contribution. In support of his argument, he relied on the Tribunal decision in the case of the M/s MTR Maiya's in ITA No.95/Bang/2023 vide order dated 27/4/2023. Therefore, he requested that the matter may be sent back to the AO for the verification of the actual date of payment of salary and due date of the payment of employees' contribution towards PF and ESI as per sec.36(1)((va) r.w.s 2(24)(x) of the Act.

3. The Id.DR relied on the order of the lower authorities and submitted that the Hon'ble Supreme settled this issue in the case of Checkmate Services (supra) relied on by the Id.CIT(A).

4. After hearing rival contention and facts submitted by the Id.AR, we note that the CPC has disallowed the employees contribution as per 36(1)(va) r.w.s 2(24)(x) of the Act. On going through order of the

CIT(A), the details of the disallowance have been quoted in his order at page No.6 to 8 of its order and in the table due date and date of amount paid has been mentioned. We note that there is a delay in remitting the employees' contribution as per the respective Act reported in Form 3CD. However, the Id.AR of the assessee submitted that the due salary for the month of April has been paid in the month of May, due date for payment of employees contribution should have be considered as 15th June. Accordingly, we note that details as per Form No.3CD and submissions made during the course of hearing are not matching which requires examination. Considering the judgment relied by the Id.AR in the case of MTR Maiya's (supra), we are remanding this issue to the file of the AO for the verification of the actual date of payment of salary and the due date for remitting the employees' PF and ESI contribution in the light of the decision cited supra and the judgment of Hon'ble Supreme Court in Checkmate Pvt. Ltd. (supra). The assessee is directed to produce necessary documents in support of its claim and the AO is directed to give three effective opportunities of being heard and to decide the issue as per law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19th July, 2023

Sd/-
(George George K)
Vice President

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 19th July, 2023
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar/ITAT, Bangalore

- 1.श्रुतलेख की तारीख.....
DATE OF DICTATION.....
- 2.तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व.निजी सचिव/निजी सचिव के पास वापस आए
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. तारीख, जिसपर टाइप किया हुआ मसौदे, संबंधित सदस्य (2) के सामने रखा गया है
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE SECOND MEMBER.....
5. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER FOR PRONOUNCEMENT.....
6. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 7 आदेश अपलोड करने की तिथि
DATE OF UPLOADING THE ORDER ON WEBSITE.....
8. अगर अपलोड नहीं किया तो, उसका कारण
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
9. बेंच लिपिक के पास फाइल जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
10. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
11. फाइल कार्यालय अधीक्षक के पास जाने की तिथि
DATE ON WHICH THE FILE GOES TO THE OFFICE SUPERINTENDENT.....
12. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR SIGNATURE ON THE ORDER.....
13. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH OF THE TRIBUNAL ORDER.....
14. आदेश की प्रेषण की तिथि
DATE OF DESPATCH OF ORDER.....