

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.1564/MUM/2023
(Assessment Year:2020-21)

ITA No.1565/MUM/2023
(Assessment Year:2021-22)

Eximius Management Pvt. Ltd. Office No. 105, 1 st Floor, India Bulls Mint, Behind Hiranandani, Meadows Vasant Vihar, Thane (W) 400610	Vs.	Asst. Director of Income Tax. CPC, Bangaluru 560001
PAN/GIR No. AADCE1411B		
(Appellant)	:	(Respondent)

Assessee by	:	None
Revenue by	:	Shri P. D. Chougule, AR

Date of Hearing	:	20.07.2023
Date of Pronouncement	:	24.07.2023

ORDER

PER KAVITHA RAJAGOPAL, J M:

1. These appeals are filed by the assessee challenging the order of the Learned Commissioner of Income Tax (Appeals)- [hereinafter ‘the Ld. CIT(A)’] passed u/s 250

of the Income Tax Act,1961 [hereinafter 'the Act'] relevant to the A.Y. 2020-21 and 2021-22.

2. The assessee has challenged the disallowance of ₹13,09,539/- and 61,79,090/- for A.Ys. 2020-21 and 2021-22 respectively towards Employees Contribution to PF&ESIC which were deposited after the due date prescribed under the relevant Acts but before filing of the return of income. The assessee has also challenged the disallowance of ₹37,500/- on ground of non deduction of TDS as per the provision of 40(a)(ia) of the Act for A.Y. 2020-21.

3. As the facts are identical in both these appeals, we hereby pass a consolidated order by taking ITA No. 1564/Mum/2023 as a lead case for the sake of convenience.

4. We observed that there was no representation on behalf of the assessee and hence we hereby proceed to dispose of these appeals by hearing the Ld. DR and on perusal of the materials available on the record.

5. The brief facts are that the assessee company is engaged in the business of providing facility management, security services and other related services to its clients and had filed its return of income dated 26.01.2021 declaring total income of ₹2,11,56,360/-. The CPC/AO vide intimation u/s 143(1)(a) of the Act made the adjustments towards delayed payment of Employees Contribution to PF&ESIC u/s 36(1)(va) of the Act and u/s 40(a)(ia) of the Act towards the non deduction TDS on audit fees.

6. The assessee had then filed an application for rectification u/s 154 of the Act which was disposed off by the AO/CPC vide order dated 15.12.2022 upholding the disallowance made u/s 36(1)(va) and 40(a)(ia) of the Act.

7. The assessee was in appeal before the Ld. CIT(A) who confirmed the impugned addition by relying on the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. v/s CIT 143 taxmann.com 178 (SC) for disallowance made u/s 36(1)(va) and had also relied on the provision of 194J for non deduction of TDS for payment of professional fees.

8. The assessee is in appeal before us, challenging the impugned order.

9. We have heard the Ld. DR and perused the materials available on record. Ground No. 1 pertains to the disallowance made u/s 36(1)(va) of the Act wherein it is observed that the assessee has deposited the employees contribution towards PF&ESIC after the due date prescribed under the relevant Acts nevertheless before filing of the return of income. As there are contrary decisions favoring the revenue and the assessee whether the payment made after the due date prescribed under the relevant Acts was an allowable deduction as per the provision of section 36(1)(va) of the Act, the Hon'ble Apex Court vide its order dated 12.10.2022 in the case of Checkmate Services Pvt. Ltd. (supra) has laid down the proposition that delayed payment of Employees Contribution to PF&ESIC after the due date prescribed under the relevant Acts even if paid before filing of the return of income was not an allowable deduction. The Ld. CIT(A) has dismissed this ground of appeal by relying on this decision. As the issue is no longer res integra and has

been decided by the highest forum, we are inclined to dismiss this ground of appeal by the placing reliance on the said decision.

10. In the result Ground No.1 raised by the assessee is dismissed.

11. Ground no. 2 pertains to the non deduction of TDS by the assessee towards payment of audit fees as per the provision of 40(a)(ia) of the Act. The Ld. AO/CPC vide intimation u/s 143(1) (a) of the Act has disallowed the impugned amount of ₹37,500/- for the reason that the assessee has failed to deduct TDS for the payment for professional services rendered for the purpose of the assessee company. The Ld. CIT(A) confirmed the addition on the ground that section 194J of the Act provides that deduction of tax at source has to be made by the assessee for the payment of professional services for payment exceeding ₹30,000/- . As this ground of appeal requires factual verification whether the assessee was in obligation to deduct such TDS or as to whether the payee has paid tax on such income has to be verified for this purpose, we hereby remand this issue back to the Ld. AO for verifying the factual aspects of this ground. Thus Ground No. 2 is allowed for the statistical purpose.

12. In the result appeal filed by the assessee is allowed for the statistical purpose.

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13. The assessee has raised the solitary issue of disallowance of ₹61,79,090/- towards delayed payment on Employees Contribution to PF&ESIC u/s 36(1)(va) of the Act. The finding given in ITA No. 1564/Mum/2023 for ground no. 1 will apply Mutatis Mutandis

to this appeal also. Ground No. 3 and 4 in ITA No. 1564/Mum/2023 and Ground No. 3 in ITA No. 1565 are general in nature and requires no separate adjudication.

14. In the result ITA No. 1565/Mum/2023 is dismissed and ITA No. 1564/Mum/2023 is allowed for statistical purpose.

Order pronounced in the open court on 24 .07.2023

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated : 24.07.2023

Aniket Singh Rajput, Stenographer

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai