

आयकर अपीलीय अधिकरण
मुंबई पीठ " एच ", मुंबई
श्री विकस अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY, ACCOUNTANT MEMBER
आअसं.1251 /मुं/2023(नि.व.2018-19)
ITA NO.1251/MUM/2023(A.Y.2018-19)

Hasmukh Khetshi Shah,
138/150, Dadi Sheth Agiyari Lane,
Mumbai 400 002
PAN: AAPPS-1090-K

..... अपीलार्थी/Appellant

बनाम Vs.

DCIT, Cir.23(1),
Matru Mandir,
Mumbai 400 007.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ashok Mehta

प्रतिवादी द्वारा/Respondent by : Smt. Usha Gaikhwad

सुनवाई की तिथि/ Date of hearing : 05/07/2023

घोषणा की तिथि/ Date of pronouncement : 05/07/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 29/03/2023, for the Assessment Year 2018-19.

2. The assessee has raised as many as five grounds in the appeal, all the grounds are on different facets of a single issue, i.e. disallowance of Rs.27,49,564/- made u/s. 36(1)(va) of the Income Tax Act, 1961 [in short ' the Act'].

3. Shri Ashok Mehta appearing on behalf of the assessee submitted at the outset that the appeal may be restored to the file of Assessing Officer to consider the payments made by assessee towards Employees Contribution under 'Provident Fund(PF) and Employees' State Insurance Scheme(ESI). The Assessing Officer without taking note of the payments that have been made before the due date under the relevant laws made addition of the entire amount. The Id. Authorized Representative of the assessee further submits that payment for the month of August, 2017 and October, 2017 were due on 15/08/2017 and 15/10/2017, respectively. Since, 15th August, 2017 and 15th October,2017 were closed public holidays, the payments were made on the immediate next day i.e. 16th August,2017 and 16th Oct.2017. He pointed that as per section 10 of the General Clauses Act,1897, if the last day happens to be a closed holiday, the next day shall be considered as the 'due date'.

4. Smt. Usha Gaikhwad representing the Department vehemently defended the impugned order and submitted that now the issue regarding allowability of contribution towards Employees' share of PF and ESI. is settled by the Hon'ble Supreme Court of India in the case of Checkmate Services (P) Limited vs. CIT, 448 ITR 518(SC).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. Disallowance of Rs.27,49,564/- has been made u/s. 36(1)(va) of the Act. It is no more res-integra that Employees' share of Contribution towards PF and ESI made after due date as specified under the respect laws is not an allowable deduction u/s. 36(1)(va) of the Act. The short contention of the assessee is that while making disallowance, the Assessing Officer had erred in disallowing the amounts that have been made

before the due date. The issue is restored back to the file of Assessing Officer for the limited purpose to examine the dates of contribution made by the assessee under PF and ESI. In case contributions are made on or before the due date as specified under the respective laws, no disallowance u/s. 36(1)(va) of the Act is warranted to that extent. The ground No.2 of the appeal is allowed for statistical purpose.

6. The ground No.1& 3to 5 of appeal are dismissed as no submissions were made in respect of the said grounds.

7. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 5th day of July, 2023.

Sd/-

(PADMAVATHI. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/07/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) Mumbai