

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.2045/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2019-20)

Chemical Process Piping Pvt. Ltd. Ground Floor, CPE Plot, BSD Marg, Govandi, Mumbai-400088.	<b>बनाम/</b> Vs.	ACIT, Circle-14(1)(2) Aayakar Bhavan, M. K. Road, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC6212D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ashok Kumar Suthar
Revenue by:	Shri Samual Pitta (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 23/06/2023

घोषणा की तारीख /Date of Pronouncement: 27/07/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 26.08.2021 for AY. 2019-20.

2. It is noted that this captioned appeal was allowed in the first round by this Tribunal vide order dated 31.05.2022. However, the same has been recalled in MA No. 428/Mum/2022 in the light of the Hon'ble Supreme Court decision in the case of Checkmate Services Pvt. Ltd. Vs. CIT (448 ITR 518). Therefore, this appeal is adjudicated afresh. The main grievance of assessee is against the action of Ld. CIT(A) confirming the disallowance of employee's contribution made towards PF/ESI to the tune of Rs.8,12,924/-.

3. Despite notice of hearing, none appeared on behalf of the assessee. Therefore, we proceed to dispose of this appeal after hearing the Ld. DR. From a perusal of the records, it is discerned that the CPC Bangalore passed the intimation order u/s 143(1) Income Tax Act, 1961 (hereinafter "the Act") and made adjustment of Rs. 8,12,924/- u/s 36(1)(va) r.w.s. 2(24)(x) of the Act for late deposit of employee's



*ITA No.2045/Mum/2021*  
*A.Y. 2019-20*  
*Chemical Process Piping Pvt. Ltd.*

contribution to EPF/ESIC which was found to have been made beyond the due date as prescribed in the specified respective Acts (PF/ESIC Acts). The assessee in support of its claim of deduction contended that it deposited the employee's contribution of PF/ESI in the relevant accounts before filing of return of income has referred to the decision of Hon'ble Jurisdictional High Court in the case of Ghatge Patil Transport Ltd. (2015) 53 taxmann.com 141 (Bombay) and in the case of CIT Vs. Hindustan Organics Chemical Ltd. (2014) 48 taxmann.com 421 (Bom) and various other decisions of other High Courts and Tribunals. However, we find that the case laws relied upon by the assessee cannot come to its aid in the light of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd (supra). In this decision, the Hon'ble Supreme Court held that the deduction claim of an assessee/employer who deposit employee's contribution to PF/ESIC would be allowed (as a deduction) only if it is deposited in the relevant accounts by assessee/employer within the due date as prescribed in the PF/ESI Act. And if the employer/assessee fails to deposit the amount towards employee's contribution on or before the due date as prescribed under the EPF/ESIC Act, the assessee was not entitled to the deduction of employee's contribution to such funds. In the light of the Hon'ble Supreme Court decision in Checkmate Services Pvt. Ltd (supra), unless the assessee is able to show that it has deposited the employee's contribution towards PF/ESIC in the relevant fund within the due date as prescribed in the respective PF/ESIC Act, disallowance u/s 36(1)(va) of the Act as made by AO/Ld. CIT(A) need to be confirmed; and since assessee's case was not that it had deposited the employees contribution in the relevant



*ITA No.2045/Mum/2021  
A.Y. 2019-20  
Chemical Process Piping Pvt. Ltd.*

funds with in the due date, the impugned action of Ld. CIT(A) cannot be faulted.

4. And the only other question which remains to be examined is whether in the light of the Hon'ble Supreme Court decision in the case of Checkmate (supra) adjustment made by CPC u/s 143(1) of the Act is valid or not?. Section 143(1)(a) of the Act provides for following adjustment: -

- "i) any arithmetical error in the return;
- ii). An incorrect claim, if such incorrect claim is apparent from any information in the return;
- iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- (iv). Disallowance of expenditure "for increase in income indicated in the audit report but not taken into account in computing the total income in the return;
- (v). Disallowance of deduction claimed under "[section 10AA or under any of the provisions of Chapter VI-A under the heading "C-Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139."

5. Thus, it can be not that if there is any incorrect claim apparent from any information in the return of income filed by the assessee, then adjustment is permissible while processing the return by CPC u/s 143(1) of the Act. Here in this case, once the claim of deduction as per the law is not allowable, same can be disallowed by CPC in the



ITA No.2045/Mum/2021  
A.Y. 2019-20  
Chemical Process Piping Pvt. Ltd.

intimation order u/s 143(1) of the Act. It is trite law that when the Hon'ble Supreme Court lays down the law by interpreting the same, then it relates back to the date when the law was brought into the statute by legislature. Further, clause (iv) states that, if any disallowance of expenditure has been indicated in the audit report [TAR], but not taken into account in computing the total income in the return, same also can be adjusted. The auditor in the audit report specifies the due date as prescribed u/s. 36(1)(va) of the Act and the date on which deposit has been made, then in the computation of income, the same cannot be claimed as deduction, because the law envisages that such payment is disallowable, because it has not been made within the due date.

6. Accordingly, we hold that such an adjustment is permissible under the scope of section 143(1) of the Act. Needless to say that the adjustment has to be to the extent of employees' contribution and not the Employer Contribution which is allowable if deposited in relevant fund on or before due date of filing return u/s 139(1) of the Act. Therefore, Assessing Officer is directed to restrict the disallowance to the extent of employee contribution.

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

Order pronounced in the open court on this 27/07/2023.

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27/07/2023.  
Vijay Pal Singh, (Sr. PS)



ITA No.2045/Mum/2021  
A.Y. 2019-20  
Chemical Process Piping Pvt. Ltd.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai