

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.178/Kol/2022
Assessment year: 2018-19

Sri Kaushal Kumar.....Appellant
Ray Saheb Building,
Searsole Rajbari,
P.O Searsole Rajbari,
Burdwan-713358.
[PAN: AMMPK8603M]

vs.

ITO, Ward-3(1), Kolkata.....Respondent

Appearances by:

Shri Ananda Shaw, Staff, appeared on behalf of the appellant.

Shri B. K. Singh, JCIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 01, 2023

Date of pronouncing the order : August 01, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 31.03.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue involved in this appeal as to whether the remittance towards employees' contribution to ESI/PF after the due date prescribed under the respective ESI & PF Acts, is permissible for deduction or not.

3. The plea of the assessee has been that since the remittance in respect of employees' contribution to ESI & PF fund was made before the

due date of the filing of the return of income u/s 139 of the Act, no disallowance is warranted.

4. Earlier, the appeal of the assessee was allowed vide order dated 20.07.2022 following the order of the Coordinate Bench of the Tribunal on the issue in the case of Lumino Industries Ltd. vs. ACIT in ITA No.365/Kol/2021. Thereafter, the department moved an M.A No.54/Kol/2022 seeking to recall the order of the Tribunal dated 20.07.2022 on the basis of the decision of the Hon'ble Supreme Court in the case of 'Checkmate Services (P) Ltd. vs. CIT [2022] 143 taxmann.com 178 (SC)'. Therefore, the order dated 20.07.2022 was recalled and the registry was directed to fix the appeal for hearing afresh.

5. We note that the Hon'ble Supreme Court in the case of 'Checkmate Services (P) Ltd. (supra) has held that by virtue of section 2(24)(x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2(24)(x), unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. The Hon'ble Supreme Court held that there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act

and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

5. Today, a request letter has been received for adjournment from Shri Arvind Agarwa, AR of the assessee through Shri Ananda Shaw, his office staff. However, since the issue has been settled in favour of the revenue by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. (supra), therefore, we do not find any plausible reason to adjourn this matter. In view of the decision of the Hon'ble Supreme Court as observed above, there is no merit in the appeal of the assessee and the same is accordingly hereby dismissed.

6. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 1st August, 2023.

Sd/-
[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 01.08.2023.

RS

Copy of the order forwarded to:

1. Sri Kaushal Kumar
2. ITO, Ward-3(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches