

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 2489/Mum/2021 (A.Y. 2018-19)

Mehk Chemicals Pvt. Limited Shed No. W6, TTC Industrial Area, behind Hico Products Pawane, Thane(W)-400 705.  PAN : AABCM0329E (Appellant)	Vs.	DCIT, CPC Post Bag No. 2 Electronic City Post Office Bangalore- 560500. (Respondent)
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Assessee by	None
Department by	Smt. Mahita Nair
Date of Hearing	02.08.2023
Date of Pronouncement	02.08.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 09.12.2021 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2018-19.

2. This appeal was originally disposed of by the co-ordinate bench, vide its order dated 20-05-2022. Subsequently, the Revenue moved a Miscellaneous application numbered as MA 153/Mum/2023 seeking rectification of order passed in respect of issue relating to disallowance of employees contribution to PF/ESI, in view of the subsequent decision rendered by Hon'ble Supreme Court in the case of Checkmate Services P Ltd vs. CIT (143 taxmann.com 178)(SC). Accordingly, the above said order was recalled by the co-ordinate Bench, vide its order dated 17-05-2023 for deciding the above said issue afresh. Accordingly, this appeal was placed before us.

3. None appeared on behalf of the assessee. We notice from the order sheet noting that the assessee did not appear on the earlier occasion also and hence a notice was directed to be sent to the assessee. Accordingly, the registry has sent the notice by registered post. Since the impugned issue is covered by the decision rendered by Hon'ble Supreme Court, in the case referred supra, we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

4. In this appeal, the assessee is contesting the addition of Rs.17,93,400/- made u/s 36(1)(va) of the Act for the reason that the payment of employees contribution to PF/ESI has been paid beyond the due date prescribed in the respective Statutes. The assessee contended before Ld CIT(A) that the above said amounts have been paid before the due date prescribed u/s 139(1) of the Act and hence the same is not liable to be disallowed as per the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of CIT vs. Ghatge Patil Transports Ltd (368 ITR 749)(Bom). However, the Ld CIT(A) rejected the above said contentions by placing reliance on the amendment brought in the Income tax Act by Finance Act, 2021, wherein it has been clarified that the deduction u/s 36(1)(va) shall be allowed only if the employees contribution was paid within the due date prescribed in the respective Statutes. Aggrieved, the assessee has filed this appeal.

5. We heard Ld D.R and perused the record. We do not find merit in the appeal of the assessee in view of the decision rendered by Hon'ble Supreme Court in the case of Checkmate Services P Ltd (supra), wherein it has been held that the provisions of sec.43B cannot be read into sec.36(1)(va) of the Act and hence the deduction u/s 36(1)(va) can be allowed only if the employees contribution to PF/ESI has been paid within the due date prescribed in the respective Statutes. Accordingly, following the above said decision rendered by Hon'ble Supreme court, which dates back to the date of insertion of provisions of sec.36(1)(va) of the Act, we hold that the addition of

Rs.17,93,400/- was rightly made. Accordingly, we uphold the decision rendered by Ld CIT(A) for the above discussed reasons.

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

Pronounced in the open court on 02.08.2023.

Sd/-  
(Saneep Singh Karhail)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 02/08/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai