

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

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

I.T.A. No. 1998/Mum/2022 (A.Y. 2016-17)

ACIT, CC-3(2) Room No. 1913 Air India Building Nariman Point Mumbai - 400 021.	Vs.	M/s. Viraj Profile 1 st Floor, Viraj Towers, JN of Andheri Kurla Road W.E. Highway Andheri East Mumbai-400 069. PAN : AABCV1740N
(Appellant)		(Respondent)

Assessee by	Shri Pratik Jain
Department by	Shri Manoj Kumar
Date of Hearing	08.08.2023
Date of Pronouncement	09.08.2023

ORDER

Per B.R.Baskaran (AM) :-

The revenue has filed this appeal challenging the order dated 08-04-2022 passed by Ld CIT(A)-58, Mumbai and it relates to the assessment year 2016-17. The revenue is aggrieved by the decision rendered by Ld CIT(A) on the following three issues:-

- (a) Partial relief granted in respect of bogus purchases.
- (b) Partial relief granted in respect of Corporate guarantee commission.
- (c) Relief granted in respect of Employees contribution to PF/ESI

2. We heard the parties and perused the record. The assessee is engaged in the business of manufacture and sale of stainless steel products. A search and seizure action was conducted in the hands of the assessee and its associates on 13-07-2017. Consequent thereto, the assessment of the year under consideration was completed by the AO u/s 153A r.w.s. 143(3) of the

Act. The AO made various additions and in the appeal filed by the assessee, the Ld CIT(A) granted partial relief in the respect of issues (a) and (b) above and fully deleted the addition in respect of issue (c) above. The revenue has filed this appeal challenging the relief granted by Ld CIT(A).

3. We notice that the assessee had filed appeals for AY 2016-17 in respect of the addition confirmed by Ld CIT(A) in respect of issues (a) and (b) above and the said appeal has since been disposed of by the co-ordinate bench, vide its order dated 01-05-2023 passed in ITA No.691/Mum/2022. The decision taken by the co-ordinate bench will dispose of the above said two issues in this appeal.

4. In respect of addition relating to alleged bogus purchases, we notice that the AO had disallowed 100% of the value of purchases and the Ld CIT(A) has restricted the addition to 6% of the value of alleged bogus purchases. In the appeal filed by the assessee, the co-ordinate bench has restricted the addition to 2% of the value of purchases for the detailed reasons discussed therein. Accordingly, the first issue urged by the revenue is liable to be dismissed.

5. In respect of addition relating to corporate guarantee commission, the TPO had made transfer pricing adjustment by estimating the commission @ 1.50% of the Guarantee amount given by the assessee. The Ld CIT(A) had restricted the same to 0.50% following the decision rendered by Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd (2015)(58 taxmann.com 254). The co-ordinate bench has confirmed the order passed by Ld CIT(A) on this issue in the appeal of the assessee. Accordingly, the second issue urged by the assessee is liable to be dismissed.

6. The last issue relates to the addition of employees contribution to PF/ESI. The AO had disallowed a sum of Rs.1,16,19,804/- u/s 36(v)(a) of the

Act, since the assessee had remitted the amount of employees contribution to PF/ESI beyond the due dates prescribed in the respective Statutes. The Ld CIT(A) noticed that the above said amount has been paid by the assessee before the due date prescribed for filing return of income u/s 139(1) of the Act. Accordingly, following the decision rendered by jurisdictional Hon'ble Bombay High Court in the case of Ghatge Patil Transport Ltd, the Ld CIT(A) deleted the addition.

7. We notice that the above said issue has been set at rest by Hon'ble Supreme Court in the case of Checkmate Services P Ltd vs. CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022), wherein the Hon'ble Apex Court has held that the disallowance of employees contributions to PF/ESI is required to be made in terms of sec. 36(1)(va), if they are not credited by the assessee to the employees account in the relevant fund or funds on or before the due date prescribed in the relevant fund/Act/Rule etc. Hence the payments made after the due date prescribed in the relevant statutes, but before the due date prescribed u/s 139(1) of the Act shall be liable to be disallowed. Accordingly, we reverse the order passed by Ld CIT(A) on this issue and restore the addition made by the AO.

8. In the result, the appeal filed by the revenue is partly allowed.

Pronounced in the open court on 09.08.2023.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

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

Mumbai.; Dated : 09/08/2023

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.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai