

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, CHENNAI**

**माननीय श्री महावीरसिंह, उपध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं. ITA No.678/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2018-19)**

<b>M/s. Amtex Software Solutions Pvt. Ltd.</b> Amtex Towers, Plot H-10, 3 <sup>rd</sup> Main Road, SIPCOT, Siruseri, Chennai-603 103.	<b>बनाम</b> / Vs.	<b>PCIT-1</b> Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAFCA-0638-J</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Ms. G. Vardhini (Advocate) - Ld.AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Ms. Deeptha M.S. (JCIT) - Ld. Sr. DR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	31-08-2023
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	31-08-2023

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. By way of this appeal, the assessee assails the invocation of revisionary jurisdiction u/s 263 as exercised by Ld. Pr. Commissioner of Income Tax, Chennai-1 (Pr. CIT) vide impugned order dated 28-03-2023 in the matter of an assessment framed by Ld. AO u/s.143(3) of the Act on 19-03-2021.

2. The Ld. AR advanced arguments and referred to the decision of Hon’ble High Court of Calcutta in **Pr. CIT vs. SPPL Property Management (P.) Ltd. (151 Taxmann.com 103)**. The Ld. AR also

submitted the as per Clause (d) of newly introduced Explanation-2 to Sec.263 w.e.f. 01.06.2015, since the order was passed considering the binding judicial precedent, the same could not be subjected to revision u/s 263. The Ld. Sr. DR, on the other hand, submitted that no view was taken on impugned issues in the assessment order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. Upon perusal of assessment order, it could be seen that two issues were identified in complete scrutiny i.e., disallowance u/s 40A(7) and allowance of expenditure by way of penalty or fine for violation of law. After considering assessee's submissions, Ld. AO accepted returned income of the assessee under normal provisions as well under 115JB.

4. Subsequently, upon perusal of case records, Ld. Pr. CIT, invoking the provisions of Sec.263, identified two more issues viz. adjustment of disallowance u/s 115JB and disallowance of late payment of ESI/PF as reported in Tax Audit Report. The Ld. Pr. CIT observed that in statement of income, the assessee disallowed amount of Rs.54.47 Lacs towards interest on TDS/PF/ESI which has been tabulated in para-2.1 of the impugned order. However, in the assessment order, only an amount of Rs.2.14 Lacs was added back leaving balance Rs.49.16 Lacs which was to be further added back u/s 115JB. This was not considered in scrutiny assessment proceedings. On the issue of late payment of ESI / PF, Ld. Pr. CIT held that the same was to be considered as assessee's income u/s 2(24)(x). Accordingly, the assessee was put to show cause notice.

5. The assessee, on the issue of computation of Book Profits, submitted that the above amounts pertained to earlier assessment years

and the same was shown and offered to tax. The Ld. AO carefully examined entire records and accepted Book profits u/s 115JB. It was also submitted that there was no specific clause under Sec.115JB to add back all taxes / fees / interest pertaining to earlier assessment years and then to arrive at Book profits. On second issue, it was submitted that at the point of assessment, this issue was covered in assessee's favor and therefore, the order could not be held to be erroneous.

6. However, rejecting the same, Ld. Pr. CIT held that the issue of Book Profit u/s 115JB requires verification. On the issue of disallowance of PF/ESI, the Ld. Pr. CIT referred to the decision of Hon'ble Supreme Court in bunch of appeals titled as **Checkmate Services P. Ltd. Vs CIT (143 Taxmann.com 178)**. Accordingly the assessment was set aside with a direction to Ld. AO to examine these issues. Aggrieved as aforesaid, the assessee is in further appeal before us.

### **Our findings and Adjudication**

7. As noted in preceding para-3, we find that only two issues were identified in complete scrutiny i.e., disallowance u/s 40A(7) and allowance of expenditure by way of penalty or fine for violation of law. No other issue was examined by Ld. AO during the course of original assessment proceedings. The Ld. Pr. CIT, upon perusal of case records, identified two more issues viz. adjustment of disallowance u/s 115JB and disallowance of late payment of ESI/PF as reported in Tax Audit Report. Undisputedly, both these issues have not been considered in original assessment proceedings and Ld. AO has not taken any view on impugned issues. The non-consideration of the issues viz. computations u/s 115JB as well as disallowance u/s 2(24)(x) r.w.s. 36(i)(va), as

flagged by Ld. Pr. CIT, would certainly make the order erroneous and prejudicial to the interest of the revenue. The Clause (d) to Explanation-2 to Sec.263 has no application since assessment order do not, at all, consider the impugned issues. In the referred case law of Hon'ble High Court of Calcutta, the issue of disallowance of ESI / PF was apparently subjected to enquiry by Ld. AO during assessment proceedings which is not the case here. Therefore, the jurisdiction of Ld. Pr. CIT could not be faulted with. We order so. However, our adjudication as above shall not be construed as any expression on the merits of the case.

8. The appeal stand dismissed.

*Order pronounced on 31<sup>st</sup> August, 2023.*

Sd/- <b>(MAHAVIR SINGH)</b> उपाध्यक्ष / VICE PRESIDENT	Sd/- <b>(MANOJ KUMAR AGGARWAL)</b> लेखासदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 31-08-2023  
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF