

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.34 & 35/PAN/2022
निर्धारण वर्ष / Assessment Years : 2018-19 to 2019-20

Remote Software Solutions Pvt. Ltd., H.No.1661, Near Tarun Bharat, Alto Betim, Penha de Franca-Goa- 403521. PAN : AADCR0144G	Vs.	Assessing Officer, WARD-2(4), Panaji.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Ashwini D. Hosmani

Date of hearing : 04.09.2023
Date of pronouncement : 06.09.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the appeals filed by the assessee directed against the separate orders of the National Faceless Appeal Centre, Delhi [‘NFAC’] dated 16.03.2022 for the assessment years 2018-19 and 2019-20 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.34/PAN/2022 for the assessment year 2018-19 are stated herein.

ITA No.34/PAN/2022, A.Y. 2018-19 :

4. Briefly, the facts of the case are that during the course of proceedings for the assessment year under consideration, the CPC, Bangalore made disallowance of Rs.40,29,887/- in the intimation u/s 143(1) of the Income Tax Act, 1961 ('the Act') dated 16.10.2019 on the ground that the appellant had not deposited the employees' share of PF and ESIC etc within due date prescribed under respective Statutes, but paid before due date for filing of Return of Income under the provisions of section 139(1) of the Act. On appeal before the NFAC, the NFAC confirmed the said disallowance.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. We heard the rival submissions and perused the material on record. The only issue relates to the confirmation of disallowance of Rs.40,29,887/- made by the CPC, Bangalore u/s 36(1)(va) of the Act on account of late deposit of the Employees' share of PF and

ESIC etc. However, the issue of making disallowance u/s 36(1)(va) in respect of Employees share of PF and ESI deposited beyond the due date under the respective Acts, but before the time limit for filing the return of income u/s 139(1) is no more *res integra* in view of the recent judgment of Hon'ble Supreme Court in Checkmate Services P. Ltd. & Ors. VS. CIT & Ors. (supra). The Hon'ble Apex Court has held that the deduction u/s 36(1)(va) can be allowed only if the employees' share in the relevant funds is deposited by the employer before the due date stipulated under respective Acts and further that the due date u/s 139(1) of the Act is alien for this purpose.

7. Respectfully following the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. & Ors. (supra), we hold that the disallowance made by the Assessing Officer is correct under law.

8. In the result, the appeal filed by the assessee in ITA No.34/PAN/2022 for A.Y. 2018-19 stands dismissed.

ITA No.35/PAN/2022, A.Y. 2019-20 :

9. Since the facts and issues involved in both the appeals of the assessee are identical, therefore, our decision in ITA

No.34/PAN/2022 for A.Y. 2018-19 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.35/PAN/2022 for A.Y. 2019-20 respectively. Accordingly, the appeal of the assessee in ITA No.35/PAN/2022 for A.Y. 2019-20 stands dismissed.

10. To sum up, both the above captioned appeals of the assessee stands dismissed.

Order pronounced on this 06th day of September, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th September, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, Panaji.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.