

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, AM & Shri Manomohan Das, JM

ITA No.791/Coch/2022: Asst.Year:2019-2020

Chempaka Kindergarten Private Limited, TC.4/1410/64 PPO Building Kuravankonam Trivandrum – 695 033. [PAN: AAHCC5213D]	vs.	The Assistant Commissioner of Income-tax, Circle 1(1) Thiruvananthapuram.
(Appellant)		(Respondent)

Appellant by: Smt.Telma Raju, Advocate  
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing: 07.09.2023	Date of Pronouncement: 07.09.2023
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**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the appellate order dated 22.06.2022, confirming the rectification order under section 154 of the Income Tax Act, 1961 ('the Act'), dated 25.04.2021 for assessment year (AY) 2019-2020.

2. At the very outset, it was submitted by Smt.Telma Raju, the learned counsel for the assessee, that the assessee's appeal is squarely covered against it by the decision of the Hon'ble Apex Court in *Checkmate Services (P.) Ltd. v. CIT* [2022] 448 ITR 518 (SC). The same may accordingly be dismissed.

3. We have heard the parties, and perused the material on record. The only issue in the instant appeal is the disallowance effected u/s. 2(24)(x) r/ws. 36(1)(va), vide order u/s.154, since confirmed in first appeal. The primary facts are not in dispute. The payment of the employees' contribution to the employees' welfare fund, i.e., EPF and ESI, stands made after the due date as specified in the relevant enactments. The Hon'ble Apex Court has in *Checkmate Services (P.) Ltd.* (supra), following the

rule of strict interpretation, as held by it in several decisions, viz. *CIT v. Dilip Kumar & Co.* [2018] 6 GSTROL 46 (SC), besides others, clarified that deductions under the Act are to be granted only when the conditions which govern them are strictly complied with. The payments in the instant case being not made in compliance with s.36(1)(va), the deemed income u/s. 2(24)(x) would consequently not be eligible for deduction there-under. This, in fact, has been the consistent stand of the Hon'ble jurisdictional High Court, as in *CIT v. Merchem Limited*[2019] 378 ITR 443 (Ker); *Popular Vehicles & Services Private Limited v. CIT* [2018] 406 ITR 150 (Ker); *CIT v. Apollo Tyres Ltd.* [2022] 447 ITR 377 (Ker). Further, it is trite law that rectification of an order could be made on the basis of a decision by the Hon'ble Apex Court or the Hon'ble jurisdictional High Court, even if rendered after the date of the order sought to be rectified (refer: *Asst. CIT v. Saurashtra Kutch Stock Exchange Ltd.* [2008] 305 ITR 227 (SC); *Kil Kotagiri Tea & Coffee Estates Ltd. v. ITAT* [1988] 174 ITR 579 (Ker); *CIT v. Aruna Luthra* [2001] 252 ITR 76 (P&H)).

We, accordingly, have no hesitation in, as fairly conceded to by the assessee, dismissing it's instant appeal as without merit. We decide accordingly.

4. In the result, the assessee's appeal is dismissed.

*Order pronounced in the open court on the conclusion of the hearing.*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin; Dated: September 07, 2023  
Devadas G\*

Copy to:

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Assistant Registrar  
ITAT, Cochin