

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 145/Mum/2022

(Assessment Year: 2018-19)

Geekay Facility Management
Private Limited
G-11, Tulsani Chambers,
Free Press Journal Marg,
Nariman Point,
Mumbai-400 021

(Appellant)

Vs.

Dy. Commissioner of Income
Tax, Circle 3(1)(1), Mumbai
Income Tax Office,
Maharshi Karve Rd,
New Marine Lines,
Mumbai-400 020

(Respondent)

PAN No. AACCG1483G

Assessee by : Shri Gyaneshwar Kataram, CA
Revenue by : Shri Prashant Mahajan, Sr. AR

Date of hearing: 13.12.2023
Date of pronouncement : 18.12.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 145/Mum/2022 for A.Y. 2018-19, is filed by the assessee recalled by the order dated 3rd November, 2023 in MA No.250/Mum/2023, which was earlier disposed off on 29th July, 2022, consequent to the MA filed by the Revenue.
02. Now, only issue remains in this appeal is that whether the employees' contribution towards provident fund, employees state insurance scheme and labor welfare fund paid beyond the due dates specified in the respective Act, are disallowable under Section 36(1)(va) of the Act.

03. Brief history shows that the assessee filed the appeal against the order of the learned CIT (A) dated 29th November, 2021, for the impugned assessment year, wherein the disallowance of ₹26,36,808/- of employees contribution to provident fund, ₹3,94,983/- of the employees insurance scheme and ₹61,776/- of the labor welfare fund by the learned Assessing Officer, were confirmed.
04. The ITAT passed the original order on 29th July, 2022, allowing the appeal of the assessee. subsequently, the Revenue filed Miscellaneous Application for recalling of the above order and on such recall of the order this appeal is reinstated.
05. The learned Authorized Representative submitted the chart before us stating that
- i. out of the employees contribution of ESIC of ₹3,94,983/- disallowed by the Lower Authorities of ₹3,07,550/- has been deposited in time. He considered the date of payment of salary as the starting point for considering the due date. Therefore, only ₹87,433/- is paid beyond the due date specified under the respective ESIC Act.
 - ii. With respect to employees contribution to provident fund of ₹26,36,808/- and labor welfare fund of ₹61,776/-, he submits that employees contribution to provident fund of

₹20,08,956/- is paid before the due dates filing of the return of income. He therefore submitted that ₹3,07,550/- of ESIC contribution of employees is paid within the due dates of the respective Act and ₹20,08,956/- of employees contribution to provident fund and ₹87,433/- as ESIC contribution of employees paid before the due date of filing of the return should not be disallowed.

06. The learned Departmental Representative submitted that the employees contribution paid beyond the due dates prescribed under the respective Act of provident Fund and ESIC cannot be allowed in view of the decision of the Hon'ble Supreme Court in case of Checkmate Services (P.) Ltd. vs. CIT [2022] 143 taxmann.com 178 (SC) dated 12-10-2022.
07. We have carefully heard the rival contentions, we find that the claim of the assessee is that out of the employees contribution of ESIC of ₹3,94,983/-, ₹3,07,550/- has been paid before the due date prescribed under the respective Act. On verification of such dates, we find that the assessee has taken the due dates from the date of payment of salaries and wages as per bank statement. It is apparent that this submission is directly covered against the assessee by the decision of Hon'ble Gujarat High Court and Madras High Court. Therefore, the contention of the assessee that the due dates should be taken of the respective Act from the date of payment of wages is not



correct. Further, on the other amount the issue is squarely covered against the assessee by the decision of the Hon'ble Supreme Court in case of Checkmate Services (P.) Ltd. (supra), wherein it has been held that the employees contribution if not deposited within the due date prescribed under the respective provident fund and ESIC Act, it becomes income of the assessee under Section 224(X) of the Act and also becomes disallowable.

08. Therefore there is no infirmity in the disallowance made by the Id AO . Same is also in conformity with the decision of Honourable Supreme court.

09. In view of the decision, we confirm the order of the learned CIT (A) confirming the disallowance of ₹30,93,567/- under Section 36(1)(va) read with section 224(X) of the Act.

010. In the result, all the grounds of appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 18.12. 2023.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 18.12. 2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai



5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai