

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.317/Kol/2023
Assessment year: 2021-22

Kamarhatty Company Ltd.....Appellant
16A, Brabourne Road,
8th Floor, Kolkata-1
[PAN: AABCK2916K]

vs.

DCIT, CPC, Bengaluru.....Respondent

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Kapil Mondal, Addl. CIT(DR), appeared on behalf of the Respondent.

Date of concluding the hearing : December 14, 2023

Date of pronouncing the order : December 14, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 06.01.2023 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The only issue raised by the assessee in this appeal is relating to the additions made by the Assessing Officer on account of claim of deduction in respect of Employees Contribution of Provident Fund and ESI. The lower authorities have disallowed the said claim of deduction for late deposits of the amount in the relevant fund.

3. The ld. AR has been fair enough to submit that the issue is now covered against the assessee by the decision of the *Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022*, wherein, the Hon'ble Supreme Court has held that the deduction u/s 36(1)(va) of the Act cannot be allowed in respect of late deposits of ESI/PF. However, the ld. counsel has made a submission that in this case, there was a reasonable cause for late deposits of the amount in the relevant fund. That the period covered in this case is from 15.05.2020 to 15.04.2021 and that the said period was marred by Covid Pandemic and there were lockdown, the staff was not attending office and even the offices were also closed. The ld. counsel, therefore, has submitted that the assessee cannot be faulted because of his incapability to perform the aforesaid statutory duty. The ld. counsel, therefore, has submitted that the assessee ultimately has deposited the Employee's Contribution to the relevant fund.

4. We find merit in the above submissions of the ld. AR. If there was impossibility of performance then certainly the assessee should not be punished for the act which was beyond his powers of control. In our view, the interests of justice will be well-served if the assessee is given an opportunity to demonstrate before the Assessing Officer, the difficulties faced by him regarding the delayed deposits arising due to Covid Pandemic/lockdown and the Assessing Officer will examine the explanation vis-a-vis the date of defaults. The Assessing Officer would not disallow the claim of deduction in respect of late deposits of ESI/PF in respect of dates regarding which the assessee will be able to demonstrate his incapacity/impossibility of performance. The Assessing Officer will accordingly decide the issue afresh.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 14th December, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 14.12.2023.

RS

Copy of the order forwarded to:

- 1 Kamarhatty Company Ltd
2. DCIT, CPC, Bengaluru
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches