

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.18/SRT/2021 (AY 2014-15)

(Hearing in Physical Court)

Shree Maroli Vibhag Khand Udyog Sahakari Mandali Ltd., Post. Maroli Bazar, Tal: Jalalpore, Dist. Navsari- 396436 PAN : AAAAM 1187 H	Vs	Assistant Commissioner of Income Tax Officer, Navsari Circle, Aayakar Bhavan, Nr. Charpool Police Station, Lunsikui, Navsari-396445
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारित की ओर से /Assessee by	Shri Mitish S Modi, FCA
राजस्व की ओर से /Revenue by	Shri Ritesh Mishra, CIT-DR
सुनवाई की तारीख/Date of hearing	27.12.2023
उद्घोषणा की तारीख/Date of pronouncement	27.12.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Valsad [for short to as 'Ld. CIT(A)'] dated 26.08.2020 for assessment year 2014-15, which in turn arises out of assessment order passed by Assessing Officer passed assessment order under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2016. The assessee has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) erred in confirming the action of the AO making disallowance of contribution towards Employees' PF/ESI claimed for the amount of Rs.48,72,408/- treating it as

not allowable u/s 36(1)(va) r.w.s.43B of the act and hence, not justified.

2.Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”

2. Rival submission of both the Learned Authorized Representative (Ld.AR) and Learned Commissioner of Income Tax-Departmental Representative (Ld.CIT-DR) heard and record perused. Ld. AR for the assessee submits that assessee is a co-operative society, which has been taken over by State Government. The payment of contribution of EPF and ESI was subject to the approval of the State Government and was deposited with the proper approval and the same cannot be disallowed, which has been deposited with in the extended/ grace period.
3. On the other hand, Ld. Sr -DR for the Revenue supported the order of lower authorities and submits that ground of appeal raised by assessee is covered against the assessee by the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. Vs CIT in Civil Appeal No.2833 of 2016 dated 12.10.2022, wherein the Apex Court has already held that no deduction is allowable for delaying in deposit of employees contribution on account of ESIC/PF. After the aforesaid decision, no such deduction is permissible as decision of Hon'ble Apex Court is binding precedent as per Article-141 of the Constitution of India.

4. We have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. We find that the ground of appeal raised by the assessee is squarely covered against the assessee, at this stage by the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra). However, we find that Hon'ble jurisdictional High Court has admitted the Special Civil Application No.270 of 2022 in the case of M/s AS Construction vs. Union of India dated 11.01.2022 admitted the petition of petitioner in challenging the Constitutional validity of provision of section 36(1)(va) along with Explanation 2 and the Explanation 5 to Section 43B of the Act as *ultra vires*. Therefore, at this stage the grounds of appeal raised by the assessee is dismissed, however, the assessing officer is directed that in case the petition of A.S Construction is succeeded, the assessee be allowed similar relief with this direction, the Ground No.1 is dismissed.

5. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 27/12/2023 at the time of hearing.

Sd/-
(Dr ARJUN LAL SAINI)
[लेखा सदस्य/ACCOUNTANT MEMBR]
Surat, Dated: 27/12/2022
Dkp. Out Sourcing Sr.P.S

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]