

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

M.A. no.14/Mum./2024
(Arising out of ITA No.217/Mum./2022)
(Assessment Year : 2018-19)

Chaudhry Industries
34, Quay Street, New Darukhana
Reay Road, Opp. Britannia Biscuits
Mumbai 400 010 PAN-AACFC0581A

..... Applicant
(Original Appellant)

v/s

Dy. Commissioner of Income Tax
Central Processing Centre, Bengaluru

..... Respondent
(Original Respondent)

ITA No.217/Mum./2022
(Assessment Year : 2018-19)

Chaudhry Industries
34, Quay Street, New Darukhana
Reay Road, Opp. Britannia Biscuits
Mumbai 400 010 PAN-AACFC0581A

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Processing Centre, Bengaluru

..... Respondent

Assessee by : Shri C.V. Jain
Revenue by : Smt. Mahita Nair

Date of Hearing – 02/02/2024

Date of Order – 06/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present Miscellaneous Application ("M.A") has been filed by the assessee seeking recall of the ex-parte order dated 24/07/2023, passed under section 254(1) of the Income Tax Act, 1961 ("the Act") by the Co-ordinate Bench of the Tribunal in assessee's appeal being ITA no.217/Mum./2022, for the assessment year 2018-19.

2. We have considered the rival submissions and perused the material available on record. The Co-ordinate Bench of the Tribunal in the absence of representation on behalf of the assessee proceeded to decide the appeal ex-parte qua the assessee after hearing the submissions of the Revenue and perusal of the material available on record. By way of the present M.A., the assessee has sought recall of the aforesaid order dated 24/07/2023 under Rule 24 of the ITAT Rule, 1963. It is the plea of the learned AR that during the previous hearing, the assessee was duly represented, however, on 24/07/2023, when its appeal was fixed for hearing, due to ill health the counsel could not attend the hearing. Having considered the submissions of both sides and perused the material available on record, we are of the considered view that there was sufficient cause for non-appearance on behalf of the assessee when the appeal was called on for hearing on 24/07/2023. Therefore, we deem it fit and appropriate to recall the aforesaid ex-parte order dated 24/07/2023, passed in ITA no.217/Mum./2022.

ITA no.217/Mum./2022 **Assessee's Appeal – A.Y. 2018-19**

3. With the consent of both parties, the corresponding appeal being ITA no.217/Mum./2022, was taken up for hearing. For the year under consideration, the assessee filed its return of income on 25/02/2019 declaring a total income of Rs. 40,78,130. The return filed by the assessee was processed vide intimation dated 22/08/2019, issued under section 143(1) of the Act computing the total income of the assessee at Rs. 46,33,860, inter-

alia, after making disallowance of Rs. 5,55,728, under section 36(1)(va) of the Act. Vide impugned order, the learned CIT(A) dismissed the appeal filed by the assessee and upheld the disallowance made under section 36(1)(va) of the Act.

4. During the hearing, the learned AR submitted that the aforesaid disallowance of Rs. 5,55,728 comprises of amount paid towards employer's contribution and employees' contribution to Provident Fund ("PF")/Employees State Insurance Corporation ("ESIC"). In this regard, the learned AR also furnished the breakup of the amount paid towards employer's contribution and employees' contribution to PF and ESIC and submitted that the disallowance under section 36(1)(va) of the Act should be restricted only to employees' contribution to PF/ESIC.

5. On the other hand, the learned DR submitted that these details have not been considered by any of the lower authorities, and therefore for verification of the same, the matter be remanded to the jurisdictional AO.

6. Having considered the submissions of both sides and perused the material available on record, we deem it appropriate to remand the issue arising in the present appeal to the file of the jurisdictional AO for *de novo* adjudication after necessary verification of the details of payments made towards employer's contribution and employees' contribution to PF/ESIC. The assessee is directed to file complete data alongwith necessary supporting documents in this regard before the AO.

7. Insofar as the payment towards employees' contribution to PF/ESIC is concerned, we find that the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. v/s CIT, [2022] 448 ITR 518 (SC) held that the payment towards employees' contribution to P.F./E.S.I.C., after the due date prescribed under the relevant statute is not allowable as a deduction under section 36(1)(va) of the Act. Thus, the payments towards employees' contribution to PF/ESIC be examined in the light of the aforesaid decision of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra) and if found to be paid beyond the due

date prescribed under the relevant statute then the same be disallowed under section 36(1)(va) of the Act.

8. As far as the payments towards employer's contribution to PF/ESIC are concerned, the same may be considered for deduction as per section 43B of the Act after necessary verification of the details submitted by the assessee. With the above directions, the impugned order is set aside and the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/02/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai