

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1040/Kol/2023
Assessment Year: 2020-21

Dipak Kanti Mazumder 43, Raja S.C. Mallick Road West Bengal - 700084 [PAN : AEVPM3879E]	Vs	Asst. Director of Income Tax, CPC, Bengaluru
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri Arun Kumar Meena, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 19/02/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 15/02/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2020-21.

2. The registry has informed that this appeal is time barred by 165 days and petition for condonation of delay has been filed and we find that the delay was on account of not following up of the e-mail id by the assessee on which the first appellate order was received. However, when the assessee was apprised of the same by his authorized representative, he immediately took steps for filing this appeal before the Tribunal. Considering the same and in the larger interest of justice, delay is condoned and the appeal of the assessee is admitted for hearing.

3. None appeared on behalf of the assessee despite issuance of notice nor any application for adjournment is placed before us. We, therefore, deem it proper to adjudicate the appeal and decide it on merits *ex-parte, qua* the assessee, after hearing the ld. D/R.

4. We have heard the ld. D/R. The sole issue involved in this appeal is relating to the disallowance of Rs.22,86,330/- made by the Assessing Officer/CPC u/s 36(1)(va) of the Act, on account of delay in deposit of employees' contribution to PF & ESI. It remains an admitted fact that the same has been deposited after the due date prescribed under the PF & ESI Act. Recently, the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. v. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)*, dealing with this issue has settled down the controversy deciding in favour of the revenue holding that strict compliance with Section 36(1)(va) r.w.s. 2(24)(x) is a must to claim deduction and provisions of Section 43B of the Act cannot be applied on employees' contribution to PF & ESI and further held that the High Court rulings favouring the assessee had not laid down the correct law and further held that the position of law stands well settled and such employees' contribution towards PF & ESI if not deposited before the due date prescribed under the relevant Act governing PF & ESI, then in view of the provisions u/s 36(1)(va) r.w.s. 2(24)(x) of the Act, all such amounts shall be added to the income of the assessee. Therefore, respectfully following the ratio of law laid down by the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. (supra)*, we

uphold the findings of the Id. CIT(A) in this respect and dismiss the sole effective ground raised by the assessee.

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

Order pronounced in the Court on 19th February, 2024 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 19/02/2024

SC Sarma

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata