

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

BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. Nos. 914 & 915/Mum/2022
(निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-20)

M/s. Rajshree Polypack Ltd Lodha Supremus, Unit No. 503-504, 5 th Floor, Road No.22, Kishan Nagar, Nr New Passport Office, Wagle Estate, Thane-400064.	बनाम/ Vs.	ADIT (CPC) Post Box No. 1 Electronic City Post Office, Bangalore.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCR5189M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri P. D. Chougule (Sr. DR

सुनवाई की तारीख / Date of Hearing: 15/03/2024

घोषणा की तारीख /Date of Pronouncement: 18/03/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 22.12.2021 for AY. 2018-19 and against the order dated 10.03.2022 for AY.2019-20.

2. It is noted that these captioned appeals were allowed in the first round by this Tribunal vide order dated 30.06.2022. However, the same has been recalled in MA Nos. 138 & 139/Mum/2023 in the light of the Hon'ble Supreme Court decision in the case of Checkmate Services Pvt. Ltd. Vs. CIT (448 ITR 518). Therefore, these appeals are adjudicated denovo. The main grievance of assessee is against the action of Ld. CIT(A) confirming the disallowance of employee's contribution made towards PF/ESI to the tune of Rs.11,60,733/- for AY. 2018-19 and Rs.3,30,530/- for AY. 2019-20.



*ITA Nos. 914 & 915/Mum/2022
A.Y. Nos. 2018-19 & 2019-20
Rajshree Polypack Ltd*

3. Despite notice of hearing, none appeared on behalf of the assessee. Therefore, we proceed to dispose of these appeals after hearing the Ld. DR. From a perusal of the records, it is discerned that the CPC Bangalore passed the intimation order u/s 143(1) Income Tax Act, 1961 (hereinafter “the Act”) and made adjustment of Rs. 11,60,733/- for AY. 2018-19 and Rs.3,30,530/- for AY. 2019-20 u/s 36(1)(va) r.w.s. 2(24)(x) of the Act for late deposit of employee’s contribution to EPF/ESIC which was found to have been made beyond the due date as prescribed in the specified respective Acts (PF/ESIC Acts). The assessee in support of its claim of deduction contended that it deposited the employee’s contribution of PF/ESI in the relevant accounts before filing of return of income has referred to the decision of Hon’ble Jurisdictional High Court in the case of Ghatge Patil Transport Ltd. (2015) 53 taxmann.com 141 (Bombay) and that of CIT Vs. Hindustan Organics Chemical Ltd. (2014) 48 taxmann.com 421 (Bom) and various other decisions of other High Courts and Tribunals. However, we find that the case laws relied upon by the assessee cannot come to its aid in the light of the judgment of the Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd (supra). In this decision, the Hon’ble Supreme Court held that the deduction claim of an assessee/employer who deposit employee’s contribution to PF/ESIC would be allowed (as a deduction) only if it is deposited in the relevant accounts by assessee/employer within the due date as prescribed in the PF/ESI Act. And if the employer/assessee fails to deposit the amount towards employee’s contribution on or before the due date as prescribed under the EPF/ESIC Act, the assessee was not entitled to



*ITA Nos. 914 & 915/Mum/2022
A.Y. Nos. 2018-19 & 2019-20
Rajshree Polypack Ltd*

the deduction of employee's contribution to such funds. In the light of the Hon'ble Supreme Court decision in Checkmate Services Pvt. Ltd (supra), unless the assessee is able to show that it has deposited the employee's contribution towards PF/ESIC in the relevant fund within the due date as prescribed in the respective PF/ESIC Act, disallowance u/s 36(1)(va) of the Act as made by AO/Ld. CIT(A) need to be confirmed; and since assessee's case was not that it had deposited the employees contribution in the relevant funds with in the due date, the impugned action of Ld. CIT(A) cannot be faulted.

4. And the only other question which remains to be examined is whether in the light of the Hon'ble Supreme Court decision in the case of Checkmate (supra) adjustment made by CPC u/s 143(1) of the Act is valid or not? Section 143(1)(a) of the Act provides for following adjustment: -

1. any arithmetical error in the return;
2. An incorrect claim, if such incorrect claim is apparent from any information in the return;
3. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
4. Disallowance of expenditure "for increase in income indicated in the audit report but not taken into account in computing the total income in the return;
5. Disallowance of deduction claimed under "[section 10AA or under any of the provisions of Chapter VI-A under the heading "C-Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139."



*ITA Nos. 914 & 915/Mum/2022
A.Y. Nos. 2018-19 & 2019-20
Rajshree Polypack Ltd*

5. Thus, while processing the return [by CPC u/s 143(1) of the Act] if it finds any incorrect claim apparent from any information in the return of income filed by the assessee, then adjustment is permissible. Here in this case, once the claim of deduction as per the law is not allowable, same can be disallowed by CPC in the intimation order u/s 143(1) of the Act. It is trite law that when the Hon'ble Supreme Court lays down the law by interpreting the same, then it relates back to the date when the law was brought into the statute by legislature. Further, clause (iv) states that, if any disallowance of expenditure has been indicated in the audit report [TAR], but not taken into account in computing the total income in the return, same also can be adjusted. The auditor in the audit report specifies the due date as prescribed u/s. 36(1)(va) of the Act and the date on which deposit has been made, then in the computation of income, the same cannot be claimed as deduction, because the law envisages that such payment is disallowable, because it has not been made within the due date. And recently the Hon'ble High Court of Bombay at Goa in Tax Appeal No. 07 of 2023 in the case of Rohan Korgaonkar Vs. DCIT dated 07th Feb, 2024 has upheld the action of CPC passed u/s 143(1)(a) of the Act disallowing late deposit of employee's contribution made to PF/ESIC. And even though the assessee submitted before their Lordship that decision of Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. (supra) was in a case of assessment order passed u/s 143(3) of the Act and is not applicable for intimation passed by CPC u/s 143(1)(a) of the Act, the Hon'ble High Court repelled such a contention of the assessee



ITA Nos. 914 & 915/Mum/2022
A.Y. Nos. 2018-19 & 2019-20
Rajshree Polypack Ltd

and held in favour of Revenue. Accordingly, we hold that such an adjustment is permissible under the scope of section 143(1) of the Act. Needless to say that the adjustment has to be to the extent of employees' contribution and not the Employer Contribution which is allowable if deposited in relevant fund on or before due date of filing return u/s 139(1) of the Act. Therefore, Assessing Officer is directed to restrict the disallowance to the extent of employee contribution.

6. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on this 18/03/2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/03/2024.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai