

आयकर अपीलिय अधिकरण
मुंबई पीठ "ई", मुंबई
श्री बी.आर बास्करण, लेखाकार सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E ", MUMBAI
BEFORE SHRI B.R.BASKARAN , ACCOUNTANT MEMBER &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
M.A NO.347/MUM/2023
[Arising out of ITA NO.1810/MUM/2022 (A.Y.2018-19)]

Income Tax Officer13(3)(1)

Mumbai.

..... प्रार्थी / Applicant

बनाम Vs.

RBK Education Solutions Private Limited.
215, Atrium, 10th Floor, Opp.Divine School,
JB Nagar, Andheri Kurla Road,
Andheri (East), Mumbai – 400 059.

PAN:AACCC-5770-E

..... प्रतिवादी / Respondent

आअसं. 1810/मुं/2022 (नि. व. 2018-19)
ITA NO.1810/MUM/2022 (A.Y.2018-19)]

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..... अपीलार्थी / Appellant

बनाम Vs.

Income Tax Officer13(3)(1)

Mumbai

..... प्रतिवादी / Respondent

विभाग द्वारा/Department by : Shri P.D. Chougule
करदाता द्वारा/Assessee by : Shri Anuj Kisnadwala

सुनवाई की तिथि/ Date of hearing : 15/03//2024
घोषणा की तिथि/ Date of pronouncement : 15/03/2024

आदेश/ ORDER**PER VIKAS AWASTHY, JM:**

This Miscellaneous Application has been filed by the Revenue u/s. 254(2) of the Income Tax Act, 1961 [in short 'the Act'] seeking rectification of order dated 10/08/2022 in ITA No.1810/Mum/2022, for assessment year 2018-19.

2. Shri P.D. Chougule representing the Department submitted that the assessee in appeal had assailed the findings of CIT(A) in disallowing Employees contribution to Provident Fund(PF) and Employees State Insurance Corporation (ESIC) as the said contributions were made by the assessee after 'due date' as specified under the relevant Acts. The Id. Departmental Representative submitted that the Hon'ble Supreme Court of India in the case of Checkmate Services India (Pvt.) Ltd. vs. CIT, 448 ITR 518 has held that Employees contribution towards PF after the due date as specified under the Provident Fund Act is not allowable as deduction. The Tribunal has allowed Employees share of contribution made after due date specified under the relevant Act.

3. Shri Anuj Kisnadwala appearing on behalf of the assessee strongly opposed Miscellaneous Application by the Revenue. He submitted that there is no mistake in the order of Tribunal as alleged by the Department. The Tribunal passed the order in accordance with law as was prevelant at that point of time.

4. We have heard the submissions made by both sides. The Hon'ble Supreme Court of India in the case of Checkmate India (Pvt.) Ltd. vs. CIT(supra) in an unequivocal manner explained that Employees contribution deposited

beyond 'due date' as specified under the relevant Acts would not be eligible for deduction u/s. 36(1)(va) of the Act. In light of the decision in the case of Checkmate India (Pvt.) Ltd. Vs. CIT (supra) we are of considered view that the , order dated 10/08/2022 in ITA No.1810/Mum/2022 needs to be is recalled. The order dated 10/08/2022 is recalled and appeal of the assessee is restored to its original number.

5. **In the result, Miscellaneous Application by the Revenue is allowed.**

6. With the consent of both sides, the appeal of assessee was taken up for adjudication on merits.

ITA NO.1810/MUM/2022 –A.Y. 2018-19:

7. The solitary issue raised in the appeal is disallowance of Rs.23,81,091/- on account of Employees share of contribution towards Provident Fund (PF) and disallowance of Rs.3,33,015/- towards Employees share of Employees State Insurance Corporation (ESIC). It is an admitted fact that assessee had deposited Employees share of contribution towards PF and ESIC after 'due date' as specified under the relevant Acts. The Hon'ble Apex Court in the case of Checkmate Services India (Pvt.) Ltd. vs. CIT(supra) has explained the legal position that to be eligible to claim deduction u/s. 36(1)(va) of the Act, the Employer is under obligation to deposit Employees share of contribution towards PF & ESIC before the 'due date' under the respective Laws.

8. The Id. Counsel for the assessee submitted that the decision in the case of Checkmate Services India (Pvt.) Ltd. vs. CIT (supra) was rendered in a case where the assessment was made u/s. 143(3) of the Act. In the case of assessee, the return of income was processed u/s. 143(1) of the Act, hence,

the said decision would not apply in the instant case. The aforesaid argument made on behalf of assessee is without any merit. The Hon'ble Jurisdictional High Court in the case of Rohan Korgaonkar vs. DCIT in Income Tax Appeal No.7 of 2023 decided on 07/02/2024 has clarified that whether the assessment is made u/s. 143(3) of the Act or the return of income is processed u/s. 143(1) of the Act makes no difference. The ratio laid down in the case of Checkmate Services India (Pvt.) Ltd. vs. CIT(supra) does not distinguish assessment made u/s. 143(3) or 143(1) of the Act. Thus, in light of facts of the case and the decision referred above, we find no infirmity in the impugned order, hence, appeal of assessee is dismissed.

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

Order pronounced in the open Court on Friday the 15th day of March, 2024.

Sd/-

(B.R. BASKARAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/03/2024
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai