

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

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| ITA No.31/Hyd/2024 | | |
| Assessment Year: 2019-20 | | |
| Mangatrai, R/o.5-9-46, Basheerbagh, Hyderabad – 500063, Telangana. | Vs. | The Deputy Commissioner of Income Tax, Circle – 5(1), Hyderabad. |
| (Appellant) | | (Respondent) |
| Assessee by: | Shri B. Radha Krishna, C.A. | |
| Revenue by: | Ms. Sheetal Sarin, Sr.AR. | |
| Date of hearing: | 27.03.2024 | |
| Date of pronouncement: | 27.03.2024 | |

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) / Addl/JCIT(A) – 11, Mumbai dated 21.11.2023 for the AY 2019-20 on the following grounds :

2. The grounds raised by the assessee reads as under :

“1. The order of the ADDL/JCIT (A) — 11, MUMBAI for the Assessment Year 2019-20 is wrong on the facts of the case.

2. The ADDL/JCIT (A) — 11, MUMBAI, is not justified in law and on facts of the case in disallowing the claim of employee contribution of PF amounting to Rs.1,95,676/- invoking the provisions of Sec 36 (1) (va), when the amount has been paid before the due dates under the PF legislations.

3. The ADDL/JCIT (A) — 11, MUMBAI, is not justified in law and on facts of the case in disallowing the claim of employee contribution of PF amounting to Rs. 1,95,676/- when the receipts of remitting employee share of PF is available on record.”

3. The brief facts of the case are that assessee is a partnership firm carrying on business of trading in Gold & silver ornaments and other precious and semi-precious stones under the trade name M/s. Mangatrai. The assessee has filed the return of income for A.Y. 2019-20 on 19.09.2019 declaring total income of Rs. 4,25,29,496/- and paid tax of Rs. 1,48,65,891/-. The return of income was processed u/s.143(1) of the Act. Thereafter, assessee has received an intimation u/s 143(1) of the Income Tax Act, 1961 from CPC Bangalore dated 22/02/2020 interalia making an addition for an amount of Rs.6,53,303/- towards belated payment of employees' contribution of PF and ESI as the dates of payments were not appearing in Form 3CD. The above said addition was made under section 36(1)(va) of the Income Tax Act, 1961 for not depositing the contributions received from employees towards PF and ESI before the due dates mentioned under PF and ESI Acts.

3.1. Feeling aggrieved by the intimation under section 143(1) of the Act passed by CPC, Bangaluru, assessee preferred appeal before the ld.CIT(A), who granted partial relief to the assessee.

4. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

5. Before us, ld. AR has submitted that the assessee has received employees' contribution towards Provident fund (PF) of Rs. 11,89,284/- and ESIC of Rs.3,09,516/- and has deposited the entire amount in the employees account before the due date of filing the return of income. However, the ld.CIT(A) has not considered the said submission and disallowed the claim of the assessee.

6. On the other hand, ld. DR has submitted that the issue is covered in favour of the Revenue by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC).

7. We have heard the rival submissions and perused the material on record. Undoubtedly, as per the decision of Checkmate Services Pvt. Ltd. (supra), if any deposit of ESI/PF contribution has been deposited by the assessee before the due date as contemplated by the parent Act i.e, ESI, then the said amount is allowable as deduction. In the present case, it is the case of the assessee that the challan for two months amounting to Rs.1,95,676/- were duly deposited with the said authorities and

the document to that effect has also been supplied by the assessee to the Revenue. In the light of the above, we remand back the matter to the file of jurisdictional Assessing Officer to verify whether the assessee has deposited the employees contribution under PF before the due date as laid down by the PF Act or not and if on verification, Assessing Officer found that the assessee has deposited the same within the due date, then assessee shall be given the deduction and the Assessing Officer while doing so, shall grant the opportunities of hearing to the assessee in accordance with law.

8. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Assessing Officer shall consider the evidences, if any, filed by the assessee. Needless to say the Assessing Officer shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Assessing Officer shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Assessing Officer for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes.

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

Order pronounced in the Open Court on 27th March, 2024.

Sd/-

Sd/-

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| (R.K. PANDA) VICE PRESIDENT | (LALIET KUMAR) JUDICIAL MEMBER |
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Hyderabad, dated 27th March, 2024.

TYNN/sps

Copy to:

| S.No | Addresses |
|------|---|
| 1 | Mangatrai, R/o.5-9-46, Basheerbagh, Hyderabad – 500063, Telangana. |
| 2 | The Deputy Commissioner of Income Tax, Central Circle –5(1), Hyderabad. |
| 3 | PrI.CIT(Circle), Hyderabad. |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order