

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 435/Kol/2022
Assessment Year: 2018-19

Bose Management Services Private Limited P-82, Dakshini Co-operative Housing Society Limited Canal South Road Kolkata - 700105 [PAN : AADCB1495J]	Vs	Income Tax Officer, Ward - 6(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	None
Revenue by :	Shri Prabhas Roy, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 01/05/2024
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

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 (hereinafter the "ld. CIT(A)") dt. 30/05/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. When the case was called for hearing, none appeared on behalf of the assessee. No application for adjournment has been filed. Under these circumstances, we proceed to adjudicate the instant appeal *ex-parte qua* the assessee, on the basis of available records and hearing the ld. D/R.

3. Heard the ld. D/R. We find that the instant appeal already stood disposed off by the order of this Tribunal dt.20/09/2022, wherein the sole issue involved in this appeal relating to disallowance of Rs.12,17,2791/- on account of delay in deposit of payments of employees' contribution to PS & ESI account u/s 36(1)(v)(a) r.w.s. 2(24)(x) of the Act, was adjudicated in favour of the assessee by following the judgment of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Vijayshree Ltd. in ITAT No. 243 of 2011 & G.A. No. 26607 of 2011* and other decisions of the Hon'ble High Court as well as the Co-ordinate Bench of ITAT Kolkata in the case of *Lumino Industries Ltd. vs. ACIT in ITA No. 231 & 365/Kol/2021*. Subsequently, the Department had filed a miscellaneous application seeking to recall the order of this Tribunal dt. 20/09/2022, in view of the judgment of the Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022*, on the issue involved. The order was recalled and appeal re-instated.

3.1. Now, we find that this issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in *Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022* wherein it has been held that "deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF/ESI cannot be claimed even though deposited within the due date of filing of return of income read with Section 43B of the Income-tax Act, 1961.

4. Under these circumstances, the amount is liable to be added as income in the hands of the assessee. The disallowance of Rs.12,17,2791/-

is hereby confirmed and the grounds raised by the assessee are dismissed.

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

Order pronounced in the Court on 8th May, 2024 at Kolkata.

Sd/-

**(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER**

Sd/-

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

Kolkata, Dated 08/05/2024

**SC S/P*

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