

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

BEFORE
SHRI LALIET KUMAR, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No. 209/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Chededeepu Srinivas, Vs. Income Tax Officer,
Hyderabad Ward-14(3),
[PAN No. AFZPC9145A] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Yeshwanth Reddy, AR
appeared for
Shri Santi Pavan Kumar, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 03/06/2024
घोषणा की तारीख/Pronouncement on: 11/06/2024

आदेश / **ORDER**

PER MADHUSUDAN SAWDIA, A.M:

The captioned appeal has been filed at the instance of Shri Chededeepu Srinivas ('the assessee'), against the order dated 22/11/2023, passed by the learned Addl/JCIT(A)-9, Mumbai ("Ld. CIT(A)"), relating to the assessment year (AY) 2018-19.

2. At the outset, it is seen that, there is a delay of 41 days in filing of this appeal for which the assessee has filed a condonation petition along with affidavit explaining the reasons for such delay. After considering the contents of the condonation petition and after hearing the learned DR, the delay of 41 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The assessee has raised the following grounds of appeal before the Tribunal:

“1. The impugned order of the learned Assessing Officer in so far as it is against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The learned Commissioner of Income-tax ought to have given opportunity adhering the principles of natural justice and pass the order on merits rather dismissing the appeal on technical issue, under the facts and circumstances of the case.

3. The Appellant denies himself liable to be assessed on a total income of Rs. 59,71,466/-, as against the returned income of Rs. 14,13,220/-, under the facts and circumstances of the case.

4. The learned Authorities below are not justified in making an addition of Rs. 44,08,244/-, by disallowance under section 36(i)(va) r.w.s. 2(24)(x) of the Act, on the facts and circumstances of the case.

5. The learned Authorities below are not justified in disallowance the payment of Rs. 44,08,244/ - to the ESI and PF was made within the due date for the filing of the return of income under section 139(1) of the Act, on the facts and circumstances of the case.

6. The learned Authorities below ought to have allowed the amount of ESI & PF being Rs. 44,08,244/-, under section 37 of the Act, under the facts and circumstances of the case.

7. The Appellant denies himself liable to be charged to interest under section 234B & 234C of the Income-Tax Act, 1961, under the facts and circumstances of the case.

8. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

9. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

4. The only issue in the captioned appeal is towards addition of Rs. 44,08,244/- made by the revenue authority, on account of disallowance u/s 36(i)(va) r.w.s. 2(24)(x) of the Income Tax Act, 1961(“the Act”). At the time of hearing, it is submitted by the learned AR that the authorities below are not justified in making addition of Rs. 44,08,244/-, on account of disallowance u/s 36(i)(va) r.w.s. 2(24)(x) of the Act. It is also stated that the authorities below are not justified in disallowing the payment of Rs. 44,08,244/-, as the payment of ESI and PF was made within the due date specified for filing of the return of income under section 139(1) of the Act. It was argued that the authorities below ought to have allowed the amount of ESI & PF being Rs. 44,08,244/-, u/s. 37 of the Act. Hence, the learned pleaded that the appeal may be allowed in the interest of justice and equity.

5. On the other hand, learned DR vehemently denied the submissions made on behalf of the assessee and placed heavy reliance on the impugned order. The learned DR also brought to our notice the decision of the Hon’ble Apex Court on the identical issue, in the case of Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC).

6. We have carefully considered the facts of the case and perused the material available on record including the

impugned order. The sole issue involved in this matter, therefore, as stated by the counsel on either side, relates to the addition on account of delay in remittance of ESI/PF. On a careful consideration of the facts of the case on hand, we find that the present case is squarely covered by the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC), decided the issue against the assessee, held that,-

“53. The distinction between an employer’s contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers’ income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer’s liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees’ income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer’s obligation to deposit the amounts retained by it or deducted by it from the employee’s income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in

that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction”.

7. While respectfully following the view taken by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd., Vs. CIT (supra), we dismiss the grounds raised by the assessee.

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

Order pronounced in the open court on 11th day of June, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 11/06/2024

TNMM

ITA No. 209/Hyd/2024

Copy forwarded to:

1. Chededeepu Srinivas, H.No. 8-2-293/82/MCR/30/A,
MRNC Colony, Road No. 37, Film Nagar, Hyderabad.
2. Income Tax Officer, Ward-14(3) Hyderabad.
3. Pr.CIT, Hyderabad
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD