

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 72/Pat/2021
Assessment Year: 2018-19

Ajit Kumar Singh Geeta Mansion, Gujral Path Nalapar, P.O. Keshrinagar Rajivnagar Patna - 800024 [PAN : ALGPS9902G]	Vs	DC/AC, Circle-4, Patna
--	----	-------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
-------------------------------	--	---------------------------------

Assessee by :	Shri Somil Agarwal, C.A.
Revenue by :	Shri Sushil Kumar Mishra, JCIT, D/R

सुनवाई की तारीख/Date of Hearing : 06/05/2024
घोषणा की तारीख/Date of Pronouncement : 24/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is preferred by the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dated 05/08/2021, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2018-19.

2. The sole issue involved in this appeal is regarding the disallowance u/s 36(1)(va) of the Act on account of delayed payment of employees' contribution to PF & ESI of Rs.1,80,45,483/-, made by the Id. Assessing Officer as confirmed by the Id. CIT(A).

3. We have heard rival contentions and perused the material placed before us. The sole issue involved in this appeal is relating to the disallowance of Rs. 1,80,45,483/- made by the Assessing Officer/CPC u/s 36(1)(va) of the Act, on account of delay in deposit of employees' contribution to PF & ESI. It remains an admitted fact

that the same has been deposited after the due date prescribed under the PF & ESI Act but before the due date of filing return u/s 139(1) of the Act. Recently, the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. v. Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)*, dealing with this issue has settled down the controversy deciding in favour of the revenue holding that strict compliance with Section 36(1)(va) r.w.s. 2(24)(x) is a must to claim deduction and provisions of Section 43B of the Act cannot be applied on employees' contribution to PF & ESI and further held that the High Court rulings favouring the assessee had not laid down the correct law and further held that the position of law stands well settled and such employees' contribution towards PF & ESI if not deposited before the due date prescribed under the relevant Act governing PF & ESI, then in view of the provisions u/s 36(1)(va) r.w.s. 2(24)(x) of the Act, all such amounts shall be added to the income of the assessee. Therefore, respectfully following the ratio of law laid down by the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. (supra)*, we uphold the findings of the Id. CIT(A) in this respect and dismiss the sole effective ground raised by the assessee.

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

Order pronounced in the Court on 24th June, 2024 at Kolkata.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 24/06/2024

*SC SpA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर पटना/DR,ITAT, Patna,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Patna