

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.785/PUN/2024
निर्धारण वर्ष / Assessment Year : 2020-21

Tukaram Suryavanshi, 210 Ruby Premises Chincholi Mindspace, Mumbai- 400064. PAN : AFOPS1105F	Mahadev Industrial Soc. Ltd., Bandar, Malad West,	Vs.	ITO, Ward-4(5), Pune.
Appellant			Respondent

Assessee by : Shri Anil Topiwala
Revenue by : Shri Akhilesh Srivastava

Date of hearing : 01.07.2024
Date of pronouncement : 11.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 29.03.2024 passed by Ld Addl./JACIT(A), Kanpur for the assessment year 2020-21.

2. The appellant raised the following grounds of appeal :-

- "1. On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A) KANPUR-NFAC has erred in confirming the learned Assistant Director of Income-Tax CPC- Bangalore order disallowing the sum of Rs. 55,10,270/- u/s 36 (1)(VA) of the Income-tax Act, 1961 being employees contribution to provident fund and ESIC as per tax audit report deposited*

beyond the due date specified under PF and ESIC laws but before the due date of filing of Income-tax return.

2. *On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A) KANPUR-NFAC has erred in confirming the learned Assistant Director of Income-Tax CPC- Bangalore in disallowing Rs.55,10,270/- as per Tax Audit Report being employees contribution to the PF & ESIC which is deposited beyond the due date specified under PF & ESIC Laws but before the due date of filing Income Tax Return under Section 143(1) as mistake apparent from record.*
3. *The appellant craves leave to add, alter amend or delete any grounds of appeal either before or during the course of hearing of the appeal.”*

3. The facts, in brief, are, that the assessee is an individual filed his return of income on 15.01.2021 declaring total income of Rs.50,05,320/-. The CPC in its intimation u/s 143(1) of the IT Act enhanced the income of the assessee to an amount of Rs.1,05,15,590/- on account of disallowing the amount of Rs.55,10,270/- representing the late deposit of amounts pertaining to amount of employees contribution to PF and ESIC, despite the same having been paid before the due date of filing the return of income.

4. Being aggrieved with the action of the Assessing Officer, an appeal was preferred before the Id. Addl./JCIT(A), Kanpur, who vide impugned order dated 29.03.2024 following the judgement of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. dated 12.10.2022 dismissed the appeal of the assessee.

5. Being aggrieved with the above decision of the ld. Addl./JCIT(A), the assessee is in 2nd appeal before this Tribunal.

6. LD AR submitted before us that the order passed by LD ADDL/JCIT(A), Kanpur is not correct, wherein he confirmed the order/ intimation u/s 143(1) of the IT Act passed by CPC Bengaluru, disallowing the sum of Rs.55,10,270/- u/s 36(1)(va) of the IT Act being employees contribution to PF & ESIC on the basis of payment of the same beyond the due dates specified under PF & ESIC laws, as mentioned in the audit report furnished along with return of income. A paper book in support of contentions raised also furnished before the bench. It was also challenged that the CPC cannot make addition on debatable issues. It was therefore prayed before the bench that the order passed by LD ADDL/JCIT(A), Kanpur & also passed by CPC, Bengaluru may kindly be cancelled & the returned income may kindly be accepted.

7. LD DR vehemently supported the orders passed by both the authorities & submitted that in the light of judgement passed by Hon'ble Apex Court on the very same subject matter in the case of Checkmate Services Pvt. Ltd. (supra), the appeal of the assessee may kindly be dismissed.

8. We have heard LD Counsels from both the sides & perused the material available on the record. We are of the considered opinion that the issue regarding disallowance of ESIC & PF payment on the basis of delayed payment of the same, beyond the due dates as prescribed under respective laws is no more *res integra* in the light of judgement passed by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra). We therefore respectfully following the above judgement passed by Hon'ble Supreme Court (supra) dismiss the appeal of the assessee.

9. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open Court on 11th day of July, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th July, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A), Kanpur.
4. The Pr. CIT/CIT(A) concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.