

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2421 &2422/Mum/2024
Assessment Year: 2017-18 & 2018-19

Chemical Process Piping Ltd. CPE Plot, BSD Marg Govandi Mumbai - 400088 [PAN: AACCC6212D]	Vs	Additional/Joint/Deputy/ Assistant Commissioner of Income Tax/Income-tax Officer, National e-Assessment Centre
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Nishit Gandhi, A/R
Revenue by :	Shri H. M. Bhatt, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 15/07/2024
घोषणा की तारीख /**Date of Pronouncement**: 15/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 2421 &2422/Mum/2024 are two separate appeals by the assessee preferred against two separate orders of the Id. CIT(A), Addl/JCIT(A)-3, Ahmedabad, dt. 13/03/2024, pertaining to Assessment Years 2017-18 and 2018-19.

2. Since common grievance is involved in both these appeals, they were heard together and are disposed off by way of this common order for the sake of convenience and brevity.

3. The common grievance relates to the disallowance of employees' contribution to PF/ESIC u/s 36(1)(va) of the Act.

4. The disallowance is based upon the decision of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. v. CIT [2022] 143 taxmann.com 178*.

5. Before us, the Id. Counsel for the assessee contended that because the due date was a public holiday, as per the General Clauses Act, the next working day becomes the due date and, therefore, any payment made as per the General Clauses Act, is eligible for the claim of deduction. The Id. Counsel further pointed out that the portal/website of the PF/ESIC was having technical issues and because of which the payments could not be made electronically. In support, affidavit of Shri Sanjeev Laxmichand Maru, Consultant, has already been filed.

6. We have given a thoughtful consideration to the order of the authorities below. We are of the considered view that the impugned quarrel has been now well settled by the decision of the Hon'ble Supreme Court in the case of *Checkmate Services (P.) Ltd. (supra)*. However, at the same time if the assessee was in a position as mentioned hereinabove then, it becomes a case of impossibility of performance.

7. However, it becomes imperative to verify whether the due date was a public holiday thereby attracting the relevant provisions of the General Clauses Act and was there any technical glitch in the portal. Therefore, for verification, we restore this issue to the file of the AO. The AO is directed to verify the contents of the affidavit of Shri Sanjeev Laxmichand Maru, Consultant, and decide the issue afresh as per the relevant provisions of law and after affording the reasonable and adequate opportunity of being heard to the assessee.

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

Order pronounced in the Court on 15th July, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 15/07/2024

Sd/-

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai