

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 431/CHD/2023

निर्धारण वर्ष / Assessment Year: 2018-19

The ITO, Ward-2, Mandi Gobindgarh, Sirhind.	Vs. बनाम	Omesh Kumar Sofat, H. No.46, Block B, Mandi Gobindgarh
स्थायी लेखा सं./PAN No: AEEPS6880A		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

निर्धारिती की ओर से/Assessee by : Sh. Vinay Kumar Sofat, CA

राजस्व की ओर से/ Revenue by : Sh. Dharamvir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04.06.2024

उदघोषणा की तारीख/Date of Pronouncement : 05.06.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Department against the order of the ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 14.07.2022, for the Assessment Year 2018-19.

2. From the record, it is apparent that there is a delay of 355 days in filing of this appeal. During the proceedings before us, the ld. DR filed a letter along with an affidavit and submitted as under: -

“2. That the return of the Assessee Sh. Omesh Kumar Sofat was processed u/s 143(1) by the CPC by making an addition of Rs. 13,19,906/- by disallowing ESI/ PF on account of late deposit i.e. after the due date of deposit the same.

3. The ld. CIT(A) vide order dated 14.7.2022 allowed the appeal of the Assessee.

4. The tax effect involved in this case was less than the prescribed limit, therefore, no appeal was filed at the initial stage.

5. Now in the light of decision of Hon'ble Supreme Court in the case of Checkmate Service Pvt Ltd vs. CIT (CA No. 2833 of 2016) held that if any Assessee deposits amount held / retained by him as employees contribution to EPF/ESI after the due date, disallowance u/s 36(1 (va) would be attracted and provisions of section 43B, would not come to rescue the Assessee.”

3. A request has been made to condone the delay of 355 days in filing the appeal.

4. We have considered the facts and reasoning furnished by the Department. In view of the explanation and reasoning given, the delay of 355 days in filing the appeal is condoned.

5. During the course of hearing before us, the ld. Counsel for the Assessee contended that the Department has to adhere to the tax limit prescribed by the CBDT dated 8.8.2019.

6 From the record (Form No. 36), it is noted that the tax effect involved in the present appeal is Rs. 2,90,959/-. Accordingly, in terms of the CBDT Circular dated 08.08.2019 wherein the Department has specified the monetary limit for an appeal to be filed by the Revenue before the ITAT as Rs. 50 lacs, the appeal so filed by the Revenue is not maintainable.

7. We have also considered the A.O.'s affidavit in the light of exceptions for monetary limit in the CBDT Circular No. F. No. 279/Misc.142/2007 – ITJ (Pt) dated 29th August, 2018 and we find that the issue in this case is not covered under any exception clause.

8. In view of the above facts and circumstances, the present appeal filed by the Department is dismissed due to low tax effect. It is, however, clarified that the dismissal of the above appeal shall not be taken to be affirmation of the order of the CIT(A) on merits. The legal issue raised by the Revenue is being left open to be adjudicated in an appropriate case.

9. In the result the appeal of the Revenue is dismissed.

Order pronounced on 05.06.2024.

Sd/-
(A.D. JAIN)
Vice President

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“rkk”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar