

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA Nos.595 596/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2019-20 & 2020-21)

INDO-MIM Ltd Hyderabad PAN:AABCI0484L (Appellant)	Vs.	Dy. C. I. T. Circle 2(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri P. Murali Mohan Rao, CA		
राजस्व द्वारा / Revenue by: Shri Srinath Sadanala, DR		
सुनवाई की तारीख / Date of hearing: 26/08/2024		
घोषणा की तारीख / Pronouncement: 26/08/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

These two appeals filed by the assessee are directed against the separate, but identical orders of the learned CIT (A)/Addl/JCIT(A)-1 Mumbai, both order dated 29/04/2024 and pertains to A.Y 2019-20 & 2020-21.

2. The brief facts of the case are that the assessee company M/s. Indo MIM Private Limited is engaged in the business of manufacturing parts used for various applications

through different processes namely – Metal Injection Molding (MIM), Investment Casting (IC) and Conventional Industrial Machining (IM) etc., The assessee company filed its return of income for the A.Y 2019-20 on 20.06.2020 by declaring total income of Rs.347,33,84,752/-. The appellant had also furnished return of income for the A.Y 2020-21 on 27.11.2020 by declaring total income of Rs.413,15,14,140/-. The return of income filed by the assessee for both the A.Ys have been processed u/s 143(1) of the Act, and intimation u/s 143(1)(a) of the Act dated 8.3.2021 and 20.12.2021 was issued and determined the total income at Rs.361,59,15,360/- for A.Y 2019-20 and Rs.448,84,35,820/- for the A.Y 2020-21. The Assessing Officer, while processing the return of income for both the A.Ys has disallowed payments made by the assessee towards contribution of ESI fund, gratuity fund and other welfare funds for Rs.1,97,04,456/- for A.Y 2019-20 and Rs.4,41,99,513/- for A.Y 2020-21.

3. The assessee carried the matter in appeal before the first appellate authority. The learned CIT (A) dismissed the appeal filed by the assessee for both the A.Ys and upheld the additions made towards disallowance of contribution to ESI/Gratuity and other welfare funds by following the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT civil appeal No.2833 of 2016 order dated 12th October 2022.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in upholding the additions made by the Assessing Officer towards disallowance on contributions to certain funds including ESI/Gratuity and other welfare funds by following the decision of the Hon'ble Supreme Court in the case Checkmate Services (P) Ltd vs. CIT (Supra), even though the contribution to various welfare funds for the benefit of employees is not covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT. The learned Counsel for the assessee further submitted that the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd has considered the issue of employees contribution to PF & ESI, whereas in the present case, the issue was contribution to welfare funds like ESI/Gratuity and other welfare funds and said funds are contributed on or before the due date for furnishing of return of income u/s 139(1) of the I.T. Act, 1961. The Assessing Officer/CPC without examining the relevant facts has simply disallowed the amount of contribution to various funds. The learned CIT (A) without appreciating the relevant facts has simply sustained the additions made by the Assessing Officer. Therefore, he submitted that the issue may be set aside to the file of the Assessing Officer to verify the facts with regards to the dates of payment and allow deductions as per law.

6. The learned DR, on the other hand, supporting the orders of the authorities below submitted that the issue is squarely covered in favour of the Revenue by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT. The learned CIT (A) after considering the relevant facts has rightly disallowed the belated payment of welfare fund and their orders should be upheld.

7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer/CPC, while processing return of income of the appellant for both the A.Ys has made adjustment towards contribution to various welfare funds, including ESI/Gratuity and other welfare funds on the ground that the assessee has failed to deposit contribution to the said funds on or before the due date prescribed under the relevant acts. The learned CIT (A) sustained the addition made by the Assessing Officer by following the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT (Supra). It is the argument of the learned Counsel for the assessee that in respect of contribution to ESI, the appellant has contributed the amount on or before the due date prescribed under the Act, except for one month where the contribution has been paid one day later because the previous day was general holiday on account of Independence Day. In respect of contribution to Gratuity and other welfare funds, the said contributions does not cover under

the ESI & PF and further said contributions are even paid on or before the due date of furnishing of the return of income. The appellant has furnished the relevant details along with the return of income. The Assessing Officer without considering the relevant dates simply disallowed contribution to various funds.

8. We find that, in so far as the contribution to ESI, it is not ascertainable from the assessment order or from the order of the learned CIT (A), whether it is pertains to employees contribution or employers contribution. In case, the amount paid by the assessee pertains to employees contribution, then it is covered against the assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT (Supra). In case, the contribution pertains to employer contribution, then the date of payment needs to be verified with reference to the date of furnishing of return of income. In case of contribution to Gratuity and other welfare funds, those contributions needs to be verified with reference to the due date for furnishing of return of income, because contribution of above two funds is not covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT. The facts are not clear and needs further verification from the Assessing Officer. Therefore, we are of the considered view, the issue needs to go back to the file of the Assessing Officer for further verification. Thus, we set aside the order passed for both the A.Ys and restore the issue back to the file of the Assessing Officer. The

Assessing Officer is directed to verify the contributions in light of our discussion given herein above and also in light of the decision of Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd and decide the issue in accordance with law.

9. In the result, appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 26th August, 2024.

Sd/-

Sd/-

(LALIET KUMAR) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 26th August, 2024

Vinodan/sps

Copy to:

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1	INDO MIM Ltd c/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT circle 2(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order