

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1327/MUM/2024
(Assessment Year: 2020-2021)**

Mr. Sachin Laxman Nakashe,
Flat No. 1902, Signia High,
Off Western Express Highway,
Boriwali (East), Mumbai - 400066
[PAN: AABPN2639M]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax
13(1)(2), Mumbai,**
Aaykar Bhavan, Mumbai

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Avinash Baburao Karpe

Date

Conclusion of hearing : 19.06.2024
Pronouncement of order : 26.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 07/02/2024, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2020-2021, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the intimation/order, dated 23/09/2022, issued/passed under Section 143(3) read with Section 144B of the Act.
2. The Appellant has raised following grounds of appeal:
 - "1 The Ld. CIT(A) has erred in confirming the income as per the intimation under Section 143(1) instead of returned income.

2. *The Ld. CIT(A) has erred in confirming the addition of Rs. 3,31,79,779/- in the intimation under Section 143(1) which was made without giving prior intimation u/s 143(1)(a) of the act.*
 3. *The Ld. CIT(A) has erred in confirming the addition on account of Employer's Contribution to PF, ESIC etc. of Rs. 3,31,79,779/- which are in fact amounts paid within due date u/s 139(1) of the Act.*
3. When the appeal was taken up for hearing none was present for the Assessee/Appellant. The Learned Departmental Representative submitted that the issue raised in the present appeal was covered in favour of the Revenue by the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Private Ltd. Vs. Commissioner of Income Tax: [2022] 448 ITR 518 (SC). We note that in the aforesaid judgment it has been held by the Hon'ble Supreme Court that where an assessee failed to deposit Employees' Contribution towards Provident Fund and Employees' State Insurance within due date prescribed in respective statutes, deduction under Section 36(1)(va) of the Act was not allowable. The non-obstante clause contained in Section 43B of the Act would not apply in the case of employees' contribution deducted from the salary of employees and held in trust by assessee-employer. Therefore, such assessee-employer would not be absolved from the liability to deposit employees' contribution on or before the due date specified in the respective statutes as a pre-condition for claiming deduction under Section 36(1)(va) of the Act. However, on perusal of the Grounds raised in the Appeal, we find that in Ground No. 3 it was stated that the disallowance of INR.3,31,79,779/- has been made in respect of the '*Employer's Contribution to PF, ESIC, etc.*'. We also note that the return filed by the Appellant for the Assessment Year 2020-2021 was

processed under Section 143(1) of the Act vide intimation order dated 11/10/2021 and 'Income from Business & Profession' of the Appellant was computed at INR 6,16,83,026/- as against INR 2,82,03,247/- offered to tax by the Appellant in the return of income. Keeping in view the aforesaid facts and the interest of justice, we remand the issue back to the file of the Assessing Officer for adjudication as per the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Private Ltd. (supra). The Assessing Officer is directed to verify the records and restrict the disallowance of INR.3,31,79,779/- to Employee's Contribution to provident fund and employee state insurance scheme. We note that while passing the Assessment Order the Assessing Officer has taken the Income computed under Section 143(1)(a) as the basis. The Assessing Officer is, therefore, directed to verify the records to ensure that same expenses are not disallowed twice, once while processing return of income under Section 143(1) of the Act and thereafter, after while passing order giving effect to the above directions. In relation to the aforesaid the Assessing Officer shall be free to call for such information/details from the Appellant as the Assessing Officer may deem fit. The Assessing Officer shall grant to the Appellant a reasonable opportunity of being heard before passing the order as per the aforesaid directions. In terms of the aforesaid Ground No. 3 is allowed for statistical purposes.

4. In Ground No. 1 & 2 the Appellant has raised contentions relating to intimation issued under Section 143(1)(a) of the Act. The order passed under Section 143(1)(a) of the Act is an appealable order. The present appeal has been filed against the order passed by the CIT(A) in appeal preferred against the Assessment Order, dated 23/09/2022, passed under Section 143(3) read with Section 144B of the Act. Therefore, the issues raised do not arise from the order

impugned. Therefore, Ground No. 2 & 3 raised by the Appellant are dismissed. In any case, we have in paragraph 3 above directed the Assessing Officer to grant reasonable opportunity of being heard to the Appellant before passing order as per directions issued by the Tribunal.

5. In result, the present appeal by the Assessee is allowed for statistical purposes.

Order pronounced on 26.08.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.08.2024

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai