

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई|  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No.1497/Mum/2024  
(Assessment Year:2023-24)

<b>Bernhard Schulte Ship Management (India) Private Ltd</b> 401, Olympia, Main Road Hiranandani Gardens Powai, Mumbai - 400 076 [PAN: AAACE7346Q]	Vs	<b>ACIT 15(1)(2)</b> Room No.483A, 4 <sup>th</sup> Floor, Ayakar Bhavan M.K.Road <b>Mumbai -400 020</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Puthur Ramachandran Vijayaraghavan
Revenue by :	Shri Ashok Kumar Ambastha

सुनवाई की तारीख/Date of Hearing : 09.09.2024  
घोषणा की तारीख /Date of Pronouncement: 11.09.2024

**आदेश/O R D E R**

**PER NARENDRA KUMAR BILLAIYA, AM**

This appeal by the assessee is preferred against the order of Id. CIT(Appeals) 2, Coimbatore dated 11.03.2024 pertaining to Assessment Year 2023-24.

2. The grievance of the assessee reads as under:-

**1) Issuance of Intimation u/s 143(1)(a) of the ITA:**

11. The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in not taking cognizance of Your Appellants Submissions (on

CPC's Proposal) and in upholding / making the 'Adjustments in the said Intimation not envisaged u/s 143(1)(a) r.w. the first Explanation thereunder and the provisions of National Faceless Assessment Scheme, 2021.

1.2. The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in totally ignoring the fact and settled position in law that the said Adjustments/Apparent Errors' envisaged u/s 143(1)(a) of the ITA are not highly debatable ones and in making such alleged 'Adjustments'.

1.3. The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in totally ignoring the fact and settled position in law that only "Adjustments" enhancing the Total Income and Tax Liability can be made/passed u/s 143(1) of the ITA and, thereby, in upholding the (highly debatable) increase made to the Total Income and Tax Liability of Your Appellants.

1.4. The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in totally ignoring the sovereign provisions of sec. 143(1) of the ITA.

**(2) Disallowance of deduction claimed u/s 43B/36(1)(va) of the ITA of Rs. 21,66,484/-:-**

2.1. The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in upholding the disallowance / add back in the sum of Rs.21,66,484/- to the total income w.r.t. employees' contribution of PF.

2.2. The Learned Addl. CIT (Appeals) 2, Coimbatore ought to have held that the said amount mentioned in the Form No.3CD does not at all qualify towards disallowance u/s143(1)(a) in the light of the jurisdictional Bombay High Court decision and Mumbai Bench of the ITAT,

**(3) Interest u/s 234B and 234C of the ITA:-**

The Learned Addl. CIT (Appeals) 2, Coimbatore has erred in law and on facts in holding that interest u/s 234B and 234C are consequential, as Your Appellants could not have imagined the kind of disallowances made

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*by the DCIT CPC and, thus, Your Appellants were not in default of payment of any instalment of advance- tax during the year.*

**(4) Relief/Prayer:-** *In view of the aforestated factual and legal position, we humbly submit before Your Honour that-*

*i) The Appellate Order dated March 11, 2024 passed by the Learned Addl. CIT (Appeals) 2, Coimbatore be modified to the above extent;*

*ii) The said Intimation dated January 12, 2024 passed by the DCIT CPC, may please be set aside to the above extent;*

*iii) The addition of Rs. 21,66,484/- made to Your Appellants' Total Income may please be deleted;*

*iv) The Demand in the sum of Rs.2,31,53,970/- may please be quashed; and*

*v) Any other reliefs deemed fit by Your Honour may please be granted.*

3. The sum and substance of the quarrel is that the disallowance /sum added back to the total income with respect to delay in depositing employees' contribution of Provident Fund is beyond the scope of Section 143(1)(a).

4. Before us the Counsel vehemently contended that the ratio laid down by the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. (448 ITR 518) does not apply to the prima facie adjustment made u/s.143(1)(a) of the Act. The Counsel pointed out that the Co-ordinate Bench in ITA No.2376/Mum/2022 in the case of P R Packaging Services has held that the decision in the case of Checkmate Services (P) Ltd. (supra) was rendered in the context where assessment was framed u/s.143(3) of the Act and not u/s.143(1)(a) of

the Act. The Counsel further pointed out that another Co-ordinate Bench in the case of Cemetile Industries in ITA No.693/PUN/2022 and others have followed the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd.(supra) thereby, rendering diverse decision.

5. It is a say of the Counsel that as per the law laid down by the Hon'ble Supreme Court in the case of Paras Laminates (P) Ltd (1991)AIR 696, if there are distinguishing decisions by the Benches of the Tribunal, the issue should be referred to a larger Bench as powers have been conferred upon the President and that power should be construed to be wide enough to enable the President to make a reference where the Members of a Bench find themselves unable to decide a case according to what they perceive to be correct law and fact because of an impediment arising from an earlier decision with which they cannot honestly agree.

6. We have given a thoughtful consideration to the submissions of the Counsel and have carefully perused the order of the authorities below.

7. Firstly, the controversy is now well settled by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd.(supra) and secondly, there may be divergent views of the Co-ordinate Benches but the quarrel has now been well settled by the Hon'ble Jurisdictional High Court of Bombay in the case of Rohan Korgaonkar (298 Taxman 159) wherein, the Hon'ble Jurisdictional High Court held as under:-

*“7.Though the decision cited was that of the ITAT, we have considered the same. In our judgment, however, the fact that the assessment order in Checkmate Services (P) Lid (supra) was incidentally under section 143(3) and the assessment order in the present case is under section 143(1)(a) of the IT Act, makes no difference to the principle involved in this matter The ITAT decision does not discuss why this circumstance constitutes a distinguishing feature based on which the ratio of Checkmate Services (P) Ltd (supra) could be departed from*

*8. Checkmate Services (P.) Ltd (Supra)holds that the deductions can be claimed or adjustments can be made under section 141(1)(a)(iv), read with section 36(1)(va) only when the employer deposits the contributions in the employees accounts on or before the due date prescribed under the Employees Provident Fund Employees State Insurance Act. In this case, admittedly the contributions were deposited in the employees accounts beyond the due date. The circumstance that the assessment order was made under section 143(1)(a) of the IT Act can make no difference.”*

8. Respectfully following the decision of the Hon’ble High Court of Bombay (supra), we do not find any reason to interfere with the finding of the CIT(A).

9. Appeal of the assessee is accordingly dismissed and the prayer for reference to a larger Bench is denied.

**Order pronounced in the Court on 11<sup>th</sup> September, 2024 at Mumbai.**

*Sd/-*  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 11/09/2024  
Karuna, Sr. Ps.

*Sd/-*  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai