



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**ITA No.351/CTK/2024**  
Assessment Year : 2017-18

Mrutyunjay Rout, Prop. M/s. Sopny Brothers, Bampada, Chhanpur, Balasore	Vs.	ACIT, Balasore Circle, Balasore
PAN/GIR No.AAVPR 0830 L		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Natabar Panda, Adv  
Revenue by : Shri S.C.Mohanty, Id Sr DR

**Date of Hearing : 25/09/2024**  
**Date of Pronouncement : 25/09/2024**

**ORDER**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 20.6.2024 in Appeal No.CIT(A),Cuttack/10284/2019-20 for the assessment year 2017-18.

2. Shri Natabar Panda, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the issue involved in assessee's appeal was in regard to the disallowance of employee's contribution to PF and ESI, admittedly paid during the relevant assessment year but after the

due date prescribed under the respective Act. It was submitted by Id AR that the issue be restored to the file of the AO in view of the decision of the Co-ordinate Bench of this Tribunal in the case of Nirakar Security & Consultancy Services Pvt Ltd in **ITA No.98/CTK/2022** for Assessment Year 2016-17 order dated 17.10.2022, the issue as to whether the said expenditure can be considered u/s.37 of the Act may be restored to the file of the Assessing Officer for adjudication.

4. In reply, Id Sr. DR submitted that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd., vs CIT in Civil Appeal No.2833 of 2016 dated 12.10.2022 in regard to issue of employees contribution to PF and ESI, which has been paid beyond the due date prescribed under the respective Act. It was further submitted that in regard to the decision of the Coordinate Bench of this Tribunal in the case of Nirakar Security & Consultancy Services Pvt Ltd referred to (supra) by Id AR in view of the decision of the Hon'ble Supreme Court in the case of M/s. Harrisons Malayalam Ltd vs CIT in SLP No.19196/2019 dated 21.11.2022, the issue of allowance being considered u/s.37 of the Act in respect of PF and ESI no more survive.

Hon'ble Supreme Court in the case of M/s. Harrison's Malayalam Ltd(supra) has held as under:

"Heard Mr.Arvind P.Datar, learned senior counsel appearing for the petitioner.

Two questions were formulated for adjudication before this Court by the assessee(s) in this proceeding. These are:

"(i) Whether the dis-allowance of delayed payments made to EPF and ESI amounting to Rs.4 Crores, is allowable as a deduction under [Section 37](#) of the Income Tax Act (the "Act")?

(ii) Whether the Tribunal is right in its order/ direction to exclude the profit on sale of two estates from computing book profit for the purpose of [Section 115JB](#) as agricultural income?; and, whether rubber income being partially taxable should not capital gain be viewed and decided similarly?

The first question stands covered by a judgment of this Court delivered in Civil Appeal No.2833/2016 titled as Checkmate Services P.Ltd. vs. Commissioner of Income Tax-1, on 12.10.2022. This appeal was dismissed along with four other appeals by a common judgment. The first question has been answered against the assessee(s) in the aforesaid judgment. We, thus, grant leave to the appellant in this proceeding but such leave shall be confined to examining the judgment under appeal only on the second question. The appeal shall be heard on this question alone. SLP(C) No. 19194-19195/2019, SLP(C) No. 19197/2019, SLP(C) No.22866-22869/2019 & Diary No(s). 34912/2019 Delay condoned.

Learned advocates appearing for the petitioners and the respondents in this batch of petitions jointly submit that the points involved in these cases have been covered by a judgment of this Court delivered in Civil Appeal No.2833/2016 titled as Checkmate Services P.Ltd. vs. Commissioner of Income Tax-1, on 12.10.2022. This appeal was dismissed along with four other appeals by a common judgment. It is joint submission of the parties that the present set of petitions stands covered by the aforesaid judgment and the point of law urged by the petitioners(assesseees) stands decided against the latter. The present set of petitions stands dismissed in view of the judgment referred to above.

Pending application(s),if any, shall stand disposed of. There shall be no order as to costs. "

5. I have considered the rival submissions. Admittedly, the Co-ordinate Bench of this Tribunal in the case of Nirakar Security & Consultancy Services Pvt Ltd(supra) has been holding that the employees contribution to PF and ESI which had been paid though belatedly was to be considered by the Assessing Officer u/s.37 of the Act, the said decision now would have to be held to be *per incurim* insofar as when the said decision was rendered by the Co-ordinate Bench in the case of Nirakar Security & Consultancy Services Pvt Ltd(supra) the decision of the Hon'ble Supreme Court in the case of M/s. Harrisons Malayalam Ltd (supra) on the issue which had been held against the assessee was not within the knowledge of this Bench at the relevant point of time. Now, it has been brought to our attention. Respectfully following the decision of the Hon'ble Supreme Court in the case of M/s. Harrisons Malayalam Ltd (supra) as also the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd. (supra), the findings of the Id CIT(A) on the issue being in accordance with law stands upheld.

6. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 25/09/2024.

SD/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 25/09/2024

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The appellant: Mrutyunjay Rout, Prop. M/s.  
Sopny Brothers, Bampada, Chhanpur,  
Balasore
2. The Respondent: ACIT, Balasore Circle,  
Balasore
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt. Secretary  
**ITAT, Cuttack**

