

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.Nos.513 & 514/PUN./2023
Assessment Years 2017-2018 & 2018-2019

Brisk India Private Limited, 4 th Floor, 403, Western Court Bldg., D, Bhamburda, Shivaji Nagar, PUNE – 411 016. Maharashtra. PAN AADCB7000M	vs.	The DCIT, Central Circle-1(1), Room No.617, Aayakar Sadan, Bodhi Towers, Salisbury Park, Gultekadi, PUNE – 411 037. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Nikhil S. Pathak
For Revenue :	Shri Ramnath P. Murkunde

Date of Hearing :	07.10.2024
Date of Pronouncement :	10.10.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

These assessee's twin appeals I.T.A.Nos.513 & 514/PUN./2023, for assessment years 2017-2018 and 2018-2019, arise against the CIT(A), Pune-11, Pune's DIN & Order nos. ITBA/APL/S/250/2022-23/1050217639(1) and 1050217263(1), both dated 28.02.2023, in proceedings u/s.143(1) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case files perused.

2. It emerges at the outset from a perusal of the case files and with the able assistance coming from both the sides

that this tribunal's earlier learned coordinate bench's common order dated 24.05.2023 had dismissed the instant twin appeals since raising the sole identical issue of disallowance(s) of ESI/PF u/sec.36(1)(v)(a) of the Act in light of hon'ble apex court's recent landmark decision in Checkmate Services P. Ltd. & Ors. vs. CIT & Ors. (2022) 448 ITR 518 (SC). The assessee thereafter appears to have filed it's as many miscellaneous applications M.A.Nos.320 and 319/PUN./2023 *inter alia*, pleading therein that it's 6th substantive ground in ITA.No.513/PUN./2023 in assessment year 2017-2018 and 6th to 10th substantive grounds in ITA.No.514/PUN./2023 in assessment year 2018-2019 remained un-adjudicated. There is no dispute between the parties that his tribunal's as many order(s); both dated 05.08.2024 in assessee's M.A.Nos.318 and 319/PUN./2023; appeal-wise; respectively; have recalled the earlier common order dated 24.05.2023 in very terms.

3. It is in this factual backdrop that the registry has listed the assessee's instant twin appeals I.T.A.Nos.513 and 514/PUN./2023 for second round of hearing before us.

4. Learned counsel at this stage invites our attention to the assessee's former appeal ITA.No.513/PUN./2023 raising the following 6th substantive ground :

"The Ld. CIT(A)/CPC erred in not appreciating that the amount of disallowance is not correctly computed & thus,

the disallowance shall be restricted to Rs.3,59,90,202/- only.”

5. Suffice to say, the assessee's sole substantive argument raised before us during the course of hearing is that although the issue of sec.36(1)(v)(a) ESI/PF disallowance(s) regarding employees' contribution; has already gone in department's favour in principle as per hon'ble apex court's landmark decision in Checkmate Services P. Ltd. & Ors. vs. CIT & Ors. (2022) 448 ITR 518 (SC); it's only endeavour herein is regarding correct quantification since the learned lower authorities have adopted the corresponding figure as Rs.3,69,99,417/- than that of the correct sum amounting to Rs.3,59,90,202/-. Mr. Pathak's case therefore, is that the assessee restricts it's claim only *qua* the correct quantification of the impugned disallowance(s) at this stage which has been wrongly taken as per it's tax audit report Form-3CA to 3CD filed by it's auditor [pages 57 to 69 of the PB].

6. Coming to the latter assessment year 2018-2019, we find that the assessee's appeal ITA.No.514/PUN./2023 raises the following 6th to 10th substantive grounds :

“6] The Ld. CIT(A)/CPC ought to have appreciated that an amount of employer contribution towards PF, ESIC etc. of Rs.45,27,657/- has also wrongly been reported by tax auditor in his report and accordingly the same ought not to

have been disallowed. The disallowance may be restricted to employees' contribution towards various funds etc.

7] The Ld. CIT(A)/CPC ought to have appreciated that an amount of Professional Tax of the employees of Rs.80,94,525/- is not covered u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act and accordingly, the same should not be disallowed merely on the basis of incorrect reporting by tax auditor.

8] The Ld. CIT(A)/CPC ought to have appreciated that an amount of Rs.8,93,268/-, being subsidy/contribution from Govt. towards PF of the employees, is not covered u/s.36(1)(va) r.w.s. 2(24)(x) of the Act and accordingly, the same should not be disallowed merely on the basis of incorrect reporting by tax auditor.

9] The Ld. CIT(A)/CPC erred in making a disallowance of Rs.1,47,593/- without appreciating that no such disallowance was warranted on the facts of the case as the appellant has already disallowed the same in its return of income.

10] The Ld. CIT(A)/CPC ought to have appreciated that an amount of Rs.62,60,456/-, being employees' contribution towards PF/ESIC of the employees was already disallowed u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act and the

same ought not to have been again disallowed u/s. 43B of the Act merely on the basis of incorrect reporting by tax auditor.”

7. Learned counsel *inter alia* submits that the assessee has not only filed its tax audit report as well as the auditor's certificate indicating incorrect declaration in the auditor's former report but also it has enclosed herewith the corresponding correct sum(s) of the challans indicating employer's contribution as part of employees' contribution; inclusion of professional taxes; government remittances not forming part of the employees contribution as well as double disallowance(s)/addition(s) since the said tax audit report had included the very sums u/sec.43B as well; respectively. Mr. Pathak reiterates the fact that assessee has already filed on record the corresponding challans in this latter assessment year as well.

8. The department on the other hand vehemently submits that both the learned lower authorities have gone by the assessee's tax audit report(s) only for computing the impugned disallowance(s) and therefore, we ought to confirm the same.

9. We have given our thoughtful consideration to the foregoing rival submissions in both the impugned assessment years and find merit in the assessee's arguments in principle

as it seeks to re-compute the impugned disallowance(s) as per the corresponding actual sums under the prescribed heads acceding the exact sum(s) of the contribution(s) to be disallowed as per hon'ble apex court's recent landmark decision in Checkmate Services P. Ltd. & Ors. vs. CIT & Ors. (supra). We thus deem it as a fit case to restore back these twin appeals back to the learned Assessing Officer to be examined afresh in very terms, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to plead and prove all the relevant facts in consequential proceedings. Ordered accordingly.

10. These assessee's twin appeals I.T.A.Nos.513 & 514/PUN./2023 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 10.10.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 10th October, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "A" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.