

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

ITA NO. 2191/Del/2024		
A.Y.R. : 2019-20		
Everest Human Resource Consultants, Room No. 102, RZF1/382, Gali No. 2, Palam Dabri Road, Mahavir Enclave, New Delhi -110 045 (PAN: AAFFE2184A)	VS.	ITO, Ward 44(1), Civic Centre, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by : None
Respondent by : Shri Shankar Lal Verma, Sr. DR.
Date of hearing : 15.10.2024
Date of pronouncement : 17.10.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. Addl./JCIT(A), Madurai dated 18.4.2024, relating to assessment year 2019-20. The solitary ground raised in this appeal is relating to confirmation of the intimation order u/s. 143(1) wherein, disallowance u/s. 36(1)(va) to the extent of Rs. 1,40,56,406/- (Provident Fund Rs. 1,36,44,917) and Employee Contributing to ESI of Rs. 4,11,489) on account of alleged late deposit of

employee contribution of ESI/EPF was made. Disallowance in this regard were made by CPC, which was confirmed by the ld. Addl/JCIT(A).

2. Ld. Addl./JCIT(A), pursuant to the disallowance made by the CPC, has dismissed the appeal of the assessee by confirming the action of the CPC, by relying upon the judgement of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-I [2022] 448 ITR 518 (SC).

3. Aggrieved with the above Ld. CIT(A)'s order, assessee is in appeal before us.

4. None appeared on behalf of the assessee, despite issue of notice for hearing. Hence, we are disposing off this appeal exparte qua the assessee, after hearing the Ld. DR and perusing the records.

5. At the threshold, Ld. DR submitted that the issue involved in this appeal is no longer *res integra* and has been decided in favour of the Revenue by the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-I., (Supra), wherein, the Hon'ble Apex Court has held that payment towards employee's contribution to provident fund after the due date prescribed under the relevant statute is not allowable as deduction under section 36(1)(va) of the Act. The relevant findings of the Hon'ble Supreme Court, in the aforesaid case, are reproduced as under: -

“53. The distinction between an employer's contribution which is its primary liability under law – in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The

former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) - unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts – the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.

54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assesseees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are

deposited on or before the due date. If such interpretation were to be adopted, the nonobstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction."

6. In view of the aforesaid discussions and respectfully following the aforesaid binding precedent, the Ground raised by the Assessee is hereby rejected.

7. In the result, the Assessee's appeal is dismissed.

Order pronounced on 17/10/2024.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar