

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष  
**BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1201/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2014-15

Ammayapper Textiles Pvt. Ltd.,  
Perambakkam Road, Gandhipet,  
Ulandai Post, Thiruvallur – 602105.  
[PAN: AAFCA 2634N]

**Vs.** The Principal Commissioner of  
Income Tax,  
Chennai-1.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri Muralidharan, C.A  
: Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 14.08.2024

घोषणा की तारीख /Date of Pronouncement

: 10.10.2024

आदेश / **ORDER**

**PER JAGADISH, A.M :**

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2014-15 arises out of the order of Learned Principal Commissioner of Income Tax, Chennai-1 [hereinafter "PCIT(A)"] dated 29.02.2024 u/s. 263 of the Income-tax Act, 1961 (hereinafter "the Act").

: - 2 - :

2. The assessee has filed its return of income on 31.10.2014 declaring total income of Rs. 81,82,209/-. The assessment was completed u/s. 143(3) of the Act determining total income of Rs.1,37,51,541/- by disallowing employees contribution of PF & ESI u/s. 36(1)(va) of Rs. 55,69,332/- for of the Act. The assessee has filed appeal before Ld. CIT(A) against the disallowance and the Ld. CIT(A) has allowed the appeal deleting the addition made u/s. 36(1)(va) of the Act. Subsequently, the case was reopened by issuing notice u/s. 148 of the Act on 07.03.2020 for the reason that the assessee has claimed land development cost of Rs. 78 Lakhs as revenue expenditure, whereas it is in the nature of capital expenses and allowable as revenue expenses. The A.O passed order u/s. 147 of the Act making addition of Rs. 78 Lakhs being land development cost treated as capital expenditure and determining total income of Rs. 1,59,82,210/-. The Ld. PCIT on verification of case records found that the A.O in the order passed u/s. 147 of the Act has not made disallowance u/s. 36(1)(va) of the Act of employees contribution on PF & ESI of Rs. 55,69,332/- in the line of decision of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT [2022] 143 taxmann.com 178 and therefore, held the order passed by A.O u/s. 147 of the Act erroneous and prejudicial to the interest of Revenue.

3. The Ld. Authorized Representative (A.R) of the assessee has contended that the issue of allowability of PF and ESI has already been adjudicated Ld. CIT(A) and therefore, the order passed by A.O cannot be held as erroneous and prejudicial to the interest of Revenue. The Ld. AR has further submitted that at the time of passing the assessment order there was a decision of various Courts which held that such claims are allowable therefore, the order cannot be said to be erroneous and prejudicial to the interest of Revenue.

4. The Ld. Departmental Representative (DR), on the other hand, relied on the order of Ld. PCIT and argued that the order was not passed in accordance with the decision of Hon'ble Supreme Court, in the case of Checkmate Services (P.) Ltd, supra.

5. We have heard the rival submissions, and perused the materials available on record. The Ld. PCIT has held the order u/s. 147 of the Act passed by A.O erroneous and prejudicial to the interest of Revenue as the A.O has not made the disallowance of employees' contribution of PF & ESI u/s. 36(1)(va) of the Act. The Explanation 2(d) to Section 263 of the Act clearly stipulates that if the order has not been passed in accordance with any decision which is prejudicial to

:- 4 -:

the assessee rendered by Hon'ble Jurisdictional High Court or Hon'ble Supreme Court in the case of assessee or another person such order shall be deemed to be erroneous in so far as prejudicial to the interest of Revenue. The Co-ordinate Bench of this Tribunal in the case of M/s. Electrical India vs. ADIT, supra, has clarified that the decision of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT, supra, would relate back to the date of consequential amendment brought in by legislature in respect of the provisions of the Act and it was to be presumed that legal position always like that i.e., both the contributions were to be treated differently since the inception and the contribution was always subjected to the records of Section 36(1)(va) of the Act. In view of the above, we do not find any infirmity in the order of Ld. PCIT. Hence, the appeal filed by the assessee is dismissed.

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

*Order pronounced on 10<sup>th</sup> October, 2024.*

**Sd/-**  
(यस यस विश्वनेत्र रवि)  
(SS Viswanethra Ravi)  
**न्यायिक सदस्य / Judicial Member**

**Sd/-**  
(जगदीश)  
(Jagadish)  
**लेखा सदस्य / Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 10<sup>th</sup> October, 2024.

EDN/-

**:- 5 -:**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF