

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

**Before Shri Laxmi Prasad Sahu, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member**

ITA No.1820/Bang/2024: Asst.Year : 2018-2019

M/s.Blue Moon Enterprises 3 rd Cross, St.Ashwini Nagar Haveri – 581 110 Karnataka. PAN: AAHFB2506P.	vs.	The Income Tax Officer Ward 1 Haveri.
(Appellant)		(Respondent)

Appellant by: Sri.Ravishankar, Advocate
Respondent by: Sri.Chinmay Anand Jain, JCIT-DR

Date of Hearing : 29.10.2024	Date of Pronouncement: 05.11.2024
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ORDER

Per Prakash Chand Yadav, JM :

The present appeal of the assessee is arising from the order of the learned CIT(A) dated 24th July, 2024 and relates to assessment year 2018-2019, having DIN & Order No.ITBA/NFAC/S/250/2024-25/1066987560(1).

2. The facts of the case are that the assessee is a partnership firm and engaged in the business of supplying manpower to various entrepreneurs. For the impugned year, the assessee has filed its return of income(ROI) on 04th October, 2018 declaring an income of Rs.59,45,890. The return of income filed by the assessee has been processed u/s.143(1) of the Income-tax Act, 1961 vide order dated 16th October, 2019. The Ld CPC while processing the ROI has

disallowed an amount of Rs 40,76,681/-alleging that assessee failed to deposit the Employees contribution of PF and ESI in time.

3. Aggrieved with the order of the learned CPC, the assessee filed number of rectification applications before the lower authorities. However, could not find any positive response. At last the assessee filed an appeal before the Id.CIT(A) challenging the order of the CPC. The appeal filed by the assessee before the Id.CIT(A) has been dismissed by relying the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. v. CIT (2022) 143 taxmann.com 173 (SC).

4. Aggrieved with the order of the CIT(A), the assessee appeared before us and contended that the CPC as well as the CIT(A) has erred in not appreciating that the CPC while making the disallowance of PF/ESI, has included the employer's contributions also.

5. The learned Departmental Representative relied upon the orders of the authorities below.

6. After considering the rival submissions and perusing the material available on record, we observe that it is the case of the assessee that the CPC has wrongly disallowed the employer's contributions. The learned Counsel for the assessee has drawn the attention of the Bench towards page No.5-15, and page No.17 of the paper book. Perusal of these papers would show that the auditors of the assessee while filing form 3CD has included the sum of employer's contribution also at Sr. number-20 of Form 3CD, which in our view is not correct. The Tax Auditors should have reported only employee's contributions at Sr number 20 of Tax Audit Report. It is

further observed that assessee has paid the employer contribution before the due date of the filing of ITR and hence the assessee is eligible for the deduction of section 43B vis-à-vis employer contribution. It is pertinent to note that the employer contribution is not covered by the judgment of apex court in the case of Checkmate Services (P.) Ltd. (supra). Considering the facts and circumstances of the case, we hereby restore the matter to the file of the A.O for the purpose of verification and direct the A.O relief should be granted to the assessee in respect of employer's contribution and the disallowance shall be restricted up to sum attributable to Employee's contributions. Before parting we clarify that the additional grounds raised by the assessee is not tenable and the counsel for the assessee has also not addressed any arguments vis-à-vis the additional grounds. Therefore, the additional grounds are dismissed as not pressed

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05th November, 2024.

**Sd/-
(Laxmi Prasad Sahu)
Accountant Member**

**Sd/-
(Prakash Chand Yadav)
Judicial Member**

Bangalore; Dated: 05th November, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar
ITAT, Bangalore