

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.3798/Mum/2024
(Assessment Year:2018-19)

RA Fashions Pvt. Ltd. Unit No 912, 9 th Floor, C Wing, Kamal City, Kamal Mill Compound SB Marg, Lower Parel West, Mumbai -400 013	Vs.	Income Tax Officer Ward 11(1)(1) Aayakar Bhavan, M K Road, Mumbai-400 020
PAN/GIR No. AAFCR 1110 C		
(Assessee)	:	(Respondent)
Assessee by	:	Ms. Mitali Parekh
Respondent by	:	Shri R. R. Makwana
Date of Hearing	:	17.09.2024
Date of Pronouncement	:	22.11.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

2. The assessee has raised the following grounds of appeal:

Following grounds of appeal are without prejudice to each other:

- 1. The Ld. CIT(A) has erred in law and in facts in passing order u/s.250 of the Act and partly confirming the addition made by Ld. A.O.*
- 2. The Ld. CIT(A) has erred in law and in facts in not appreciating that disallowances u/s. 36(1)(va) and 43B of the Act cannot be made vide order u/s. 143(1) of the Act.*
- 3. The Ld. CIT(A) has erred in law and in facts in confirming the disallowance made by Ld. A.O. u/s. 36(1)(va) of the Act on account of contribution to provident fund and ESIC payment of Rs.46,56,387/-.*

4. *The Ld. CIT(A) has erred in law and in facts in confirming the disallowance made by Ld. A.O. u/s 43B of the Act of Rs.2,59,055/-.*

3. Brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing of textile goods for fabrics and had filed its return of income on 30.03.2019, declaring loss of Rs.8,85,517/- under normal provision and paid taxes u/s. 115JB of the Act on book profit at Rs.9,62,180/-. The same was processed u/s. 143(1) of the Act and vide intimation dated 05.02.2022, the CPC/learned Assessing Officer ('ld. A.O.' for short) made various additions/disallowances. The assessee filed a rectification application dated 02.01.2020 u/s. 154 of the Act and the ld. A.O. vide order dated 05.02.2022, determined the total income at Rs. 81,37,670/- after making the following additions/disallowance:

a) Addition on account of sale of fixed assets – Rs. 23,07,742/-

b) Disallowance u/s. 36(1)(va) – Rs. 46,56,387/-

c) Disallowance u/s. 43B – Rs. 20,59,055/-.

4. Aggrieved, the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The ld. CIT(A) vide order dated 31.05.2024, had partly allowed the appeal of the assessee.

6. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A) on the above-mentioned grounds:

1. *“On the facts and circumstances, the Assessing Officer legally erred in taxing a sum of Rs.23,07,742/- as profit of sale of Fixed assets for which block of asset has not ceased to exist and not taxable.*

2. *On the facts and circumstances the Assessing Officer legally erred in disallowing a sum of Rs 46,56,387/-u/s 36(1)(va) of the Act for employee's contribution to the Provident Fund and ESIC*

3. *On the facts and circumstances, the Assessing Officer legally erred in disallowing a sum of Rs.20,59,055/-u/s 43B of the Act.*

4. *On the facts and circumstances, the Assessing Officer leally erred in charging the interest u/s 234A at Rs.1,07,172/, 2343 at 3,39,378/-, 234C at 90,205/- and lees u/s 234F at 10.000/- of the Act.*

5. *The appellant craves leave of Your Honour to add to, alter, amend and/or delete all or any of the foregoing grounds of appeal.”*

7. The Ld. AR for the assessee submitted that only ground no. 4 would be pressed and the other grounds being covered against the assessee by the decision of Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. Vs. Commission of Income-Tax - I [2022] taxmann.com 178 (SC)*, were not pressed.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions/disallowance made by the ld. A.O. u/s. 43B of the Act amounting to Rs. 2,59,055/- before the first appellate authority but the ld. CIT(A) had failed to adjudicate the same on the ground that the assessee has not pressed the said ground subsequent to the decision of the Hon'ble Apex Court in the case of *Checkmate Services Pvt. Ltd. (supra)*.

9. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that this issue has been decided by various courts in favour of the assessee where delayed payment of employers' contribution towards PF and ESIC was an allowable deduction and was not decided against the assessee in the case of *Checkmate Services Pvt. Ltd. (supra)*. The ld. AR further contended that the assessee has got a good

case on the merits on this issue and prayed that the assessee may be given one more opportunity to present its case before the ld. CIT(A).

10. The learned Departmental Representative ('ld.DR' for short) vehemently opposed to setting aside the issue to the file of the ld. CIT(A) and relied on the order of the lower authorities.

11. On the above factual matrix of the case, we are of the considered view that the issue contested upon by the assessee pertaining to the employers' contribution u/s. 43B has not been decided against the assessee in the decision of the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra). The ld. CIT(A) has erred in not deciding this issue and has relied on the said decision. We therefore deem it fit to remand this issue back to the file of the ld. CIT(A) to decide the same on the merits of the case.

12. Ground no. 4 is therefore allowed for statistical purposes and the other grounds raised by the assessee are hereby dismissed as not pressed.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 22.11.2024

Sd/-
(O P Kant)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 22.11.2024

Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai