

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
&  
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 4266/Mum/2024**  
**Assessment Year: 2019-20**

<b>M/s. Bakshi Security &amp; Personnel Services Pvt. Ltd.</b> Unit No. 234/235 New Sonal Link Industrial Estate Building 02, Link Road Malad (E) Mumbai - 400064 <b>[PAN: AAACB3456A]</b>	Vs	<b>Income Tax Officer, Ward-12(1)(3), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Haresh P. Shah, A/R
Revenue by :	Ms. Monika H. Pande, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 03/12/2024  
घोषणा की तारीख /Date of Pronouncement: 05/12/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the Id. CIT(A)/Addl/JCIT(A)-1, Guwahati [hereinafter 'the Id. CIT(A)'] dated 27/06/2024, pertaining to AY 2019-20.

2. The grievance of the assessee reads as under:-

*"(1) On the facts and circumstances & in law, the learned CIT(A), NFAC, Delhi erred in dismissing the appeal disregarding the bonafide and genuine submissions with regard to applicability of the provisions of section 143(1)(a)(ii) & claim of Employees' PF & ESIC Contribution payment under the provisions of section 43B of the Act.*

*(2) On the facts and circumstances and in law, the learned CIT(A) failed to appreciate that -*

*(i) the provision of section 143(1)(a)(ii) was not applicable to the debatable issues as such, and therefore, the alleged claim was allowable under the provisions of section 43B of the Act; and*

*(ii) in view of the judgment of the Hon'ble Supreme Court in case of M/s. Alom Extrusions Ltd., prevalent at that point of time.*

(3) *On the facts and circumstances and in law, it is humbly prayed that the alleged disallowance may be deleted & oblige.*

(4) *Your Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal."*

3. Vide letter dated 09/11/2024, the assessee has revised its grounds of appeal as under:-

*"(1) On the facts and circumstances and in law, the learned Addl/JCIT (A)-1 Guwahati [referred as CIT(A)] erred in confirming the addition/disallowance of Rs. 8,79,69,138/- [being the total amount paid plus amount due on account of Employees' Contribution of Rs.4,29,39,816/- & Employer's Contribution of Rs.4,50,29,322/- pertaining to the whole year] merely relying upon the Hon ble Supreme Court judgment in case of M/s. Checkmate Services (P) Ltd. Vs. CIT 9[448 ITR 518 (SC)] and without any reference to the relevant facts, prevalent provisions of law and the relevant judicial pronouncement prevalent at the time of passing order u/s. 143(1) of the Act.*

*(2) Without prejudice to the above the learned CIT(A) erred in confirming the addition/disallowance of Rs. 8,79,69,138/- on account of the alleged late payment of the Employees' and Employer's Contribution to Provident Fund & ESIC under the provisions of section 36(1)(va) of the Act without realizing that the Explanation - 1 & 2 under the said section were not part of the statute at the time of passing the impugned order u/s. 143(1) for the year as it was inserted by the Finance Act, 2021, specifically mentioning that it would apply w.e.f. 1-4-2021.*

*(3) On the facts and circumstances and in law, without prejudice to the main contention, it appears that the learned CIT(A), without application of mind, erred in disallowing the total amount for the year as above including entire Employer's Contribution for the year of Rs.4,50,29,322/- under the provisions of section 36(1)(va) read with the Explanation 1 & 2 thereunder as the Appellant did not find any reference and/or any discussion on the said provisions alongwith other relevant the provisions of section 43B of the Act.*

*(4) Thus, without prejudice to the main contention the learned CIT(A) erred in confirming addition/disallowance of the amount of Rs.4,50,29,322/- pertaining to the Employer's Contribution towards PF & ESIC merely relying the above mentioned Supreme Court judgment which was dealing with the provisions of section 36(1)(va) relating to the payment of Employees' Contribution of PF & ESCI & it was not relating to the payment of Employer's contribution which under the law was allowable u/s. 43B of the Act.*

*(5) On the facts and circumstances and in law the learned CIT(A), before confirming alleged addition/disallowance, ought to have dealt with the relevant provisions of the Act.*

(6) *On the facts and circumstances the alleged addition/disallowance of Rs.8,79,69,138/- may be deleted & oblige.*

(7) *The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal."*

4. Before us, the ld. Counsel for the assessee also chose to file written submissions.

5. We have carefully considered the orders of the authorities below and also the written submissions made by the assessee.

6. After giving due consideration, we find that the quarrel in respect of delay in deposit of employees' contribution toward provident fund, has been settled by the Hon'ble Supreme Court in its decision in the case of *Checkmate Services P. Ltd. & Ors. vs. CIT & Ors. (2022) 448 ITR 518 (SC)*. Therefore, without going into the issues raised by the ld. Counsel for the assessee, we have no hesitation to say that they are now irrelevant *qua* the decision of the Hon'ble Supreme Court.

7. Insofar as, the delay in deposit of employer's contribution is concerned, we are of the considered view that it needs to be re-verified at the assessment stage. Therefore, in the interest of justice and fairplay, we restore this limited issue of considering the delay in deposit of employer's contribution, in light of the provisions of Section 43B of the Act. The AO is directed to verify the same in light of the relevant provisions of the Act and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

8. With the above directions, the appeal of the assessee is allowed in part for statistical purposes, only for the limited purpose of verification, as mentioned hereinabove.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

**Order pronounced in the Court on 5<sup>th</sup> December, 2024 at Mumbai.**

*Sd/-*  
(SAKTIJIT DEY)  
VICE PRESIDENT

*Sd/-*  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 05/12/2024

*Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai