

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri Aby T. Varkey, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.2721 & 2722/Chny/2024
निर्धारण वर्ष/Assessment Years: 2018-19 & 2019-20

TalentPro India HR Private Limited,
No. 30, Ethiraj Salai, Egmore,
Chennai 600 008.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 3(1),
Chennai.

[PAN:AABCP9823A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri Sanjeev Aditya, C.A. (Virtual)

प्रत्यर्थी की ओर से /Respondent by

:

Shri R. Clement Ramesh Kumar, CIT &
Ms. R. Anita, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

:

13.02.2025

घोषणाकीतारीख /Date of Pronouncement

:

25.03.2025

आदेश / ORDER

PER S.R. RAGHUNATHA, ACCOUNTANT MEMBER

Both the appeals filed by the assessee are directed against different but identical orders of the Addl/JCIT(A), Thiruvananthapuram both dated 28.08.2024 for the assessment years 2018-19 and 2019-20.

2. Since issues raised in both the appeals are similar based on the same identical facts, with the consent of both the parties, we proceed to hear the appeals together and pass consolidated order for the sake of convenience.

3. The first common ground raised by the assessee in both the appeals is whether the first appellate authority is justified in confirming the disallowance of contribution to PF and ESIC for both the assessment years under consideration.

4. At the outset, we note that the CPC passed intimation under section 143(1) of the Income Tax Act, 1961 ["Act" in short] by making disallowance of ₹.3,23,84,312/- and ₹.5,76,85,234/- for the assessment years 2018-19 and 2019-20 being late payment of employees' contributions to Provident Fund and ESIC. On appeal, by following the judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT in Civil Appeal No. 2833 of 2016 and Others dated 12.10.2022, the first appellate authority confirmed the disallowances made by the CPC, Bengaluru.

5. On being aggrieved, the assessee is in appeal before the Tribunal for both the assessment years under consideration.

6. The Id. AR Shri Sanjeev Aditya, C.A., by reiterating the submissions as made before the first appellate authority, submits that the case law relied on in the impugned order of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) is

prospective and no specific directions given in the above judgement to apply retrospectively.

7. Per contra, the Id. DR Shri R. Clement Ramesh Kumar, CIT submits that it is for the Hon'ble Supreme Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. He further submits that it is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling.

8. Heard both the parties and perused the material available on record. The main contention of the assessee is that the application of the decision of the Hon'ble Supreme Court in the case of *M/s. Checkmate Services P. Ltd. v. CIT (supra)*, relied on by the first appellate authority, is prospective in nature and since there was no specific direction in the judgement to apply retrospectively, the assessee is eligible to claim deduction of employees contribution to PF & ESIC, which was not remitted within the due date specified by the statute.

9. We have perused the decision in the case of *M/s. Checkmate Services P. Ltd. v. CIT (supra)* and noted that the Hon'ble Supreme Court

has considered the issue of disallowance of belated remittances of employee's contribution to PF & ESI under section 36(1)(va) r.w.s. 2(24)(x) of the Act, and after considering relevant provisions and also by relying upon various judicial precedents held that in order to get deduction under section 36(1)(va) r.w.s. 43B of the Act, timely payment of employee's contribution to PF & ESI is necessary and in case, there is a delay in remittance of such contribution to respective funds, then, the assessee is not entitled for deduction and further said sum is income of the assessee in terms of section 2(24)(x) of the Act.

10. With regard to the applicability of the decision of the Hon'ble Supreme Court, either prospectively or retrospectively, the contention of the assessee is that unless specifically directed by the Hon'ble Supreme Court to apply the judgement retrospectively, the judgement applies prospectively only, is not acceptable for the reason that in the case of M A Murthy v State of Karnataka, (2003) 7 SCC 517, the Hon'ble Supreme Court has held as under:

“It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling.”

11. Thus, we find force in the arguments of the Id. DR. In view of the above decision of the Hon'ble Supreme Court, the arguments of the Id. AR has no legs to stand. In the impugned order, the first appellate authority, rightly followed the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT (supra) and confirmed the addition made by the CPC, Bengaluru. Thus, we find no infirmity in the impugned order and the ground raised by the assessee stands dismissed for both the assessment years under consideration.

12. The next common ground raised by the assessee is with regard to restriction of deduction under section 80JJAA of the Act.

13. Consequent upon the confirmation of disallowance of late payment of PF & ESIC of ₹.3,23,84,312/-, the first appellate authority enhanced the total income from business to ₹.5,98,08,044/- and the deduction under section 80JJAA of the Act has been restricted to ₹.4,16,35,521/-, which is 30% of total cost incurred of ₹.13,87,85,069/- as against the assessee's claim of ₹.10,66,64,623/-.

14. Before us, the Id. AR has submitted that when the disallowance is made [due to belated remittance of PF & ESIC], the gross total income is also increased and the deduction is available to that extent.

He further drew our attention to page 14 of the paper book and submits that the total amount of deduction available under section 80JJA of the Act is ₹.10,66,64,623/- [₹.6,50,29,102 (30% of FY 2016-17) + ₹.4,16,35,521/- (30% of FY 2017-18)] and the amount claimed in the return is ₹.3,69,19,135/- only which is then total income. He further submits that while filing the return of income, the deduction was restricted to the gross total income as deduction cannot exceed the gross total income. He drew our attention to the Accountant's report in Form 10AD filed for FY 2016-17 & FY 2017-18 placed at pages 145 to 148 of the paper book and submits that if the gross total income/business income increases, then the deduction shall also be increased to that extent.

15. The Id. AR of the assessee referred to the provisions of section 80JJAA of the Act and submits that in order to provide an incentive for the creation of new employment, the Act intends to offer a deduction equal to 30% of the additional employee cost incurred by the assessee for the employment of new employees and the above provisions explicitly allow the said deduction to be claimed for three consecutive assessment years, starting from the year in which such new employment is provided. Since the deduction under section 80JJAA of

the Act is not limited to a single assessment year, but, is intended to be spread across three consecutive assessment years, the Id. AR of the assessee prayed for allowance of deduction under section 80JJAA of the Act for the assessment years under consideration.

16. On the other hand, the Id. DR fairly conceded that the matter may be remitted to the file of the Assessing Officer to verify and allow the deduction in accordance with law.

17. We have heard both the parties and perused the material available on record. We have also perused the relevant provisions of section 80JJAA of the Act and the same is reproduced as under for ready reference:

80JJAA(1)Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent. of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

18. Thus, we find force in the arguments of the Id. AR of the assessee. Under the above facts and circumstances, we remit the matter to the file of the Assessing Officer to recompute the eligible deduction under section 80JJAA of the Act and decide the issue afresh in accordance with law for both the assessment years under

consideration by affording an opportunity of being heard to the assessee.

19. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 25th March, 2025 at Chennai.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Chennai, Dated, 25.03.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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