

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

M.A. 101/Del/2024

(Arising out of ITA No. 2253/Del/2022)

AY: 2020-21

Barminco Indian Underground Mining Services LLP, 155, 1 st and 2 nd Floor, Okhla Ind. Estate, Phase-3, Tehkhand, Okhla Industrial Estate S.O. Southeast Delhi, New Delhi-110020 PAN: AARFB0027F	Vs.	Deputy Commissioner of Income Tax, Circle-28(1), New Delhi
(Applicant)		(Respondent)

ITA No. 2253/Del/2022)

AY: 2020-21

Barminco Indian Underground Mining Services LLP, 155, 1 st and 2 nd Floor, Okhla Ind. Estate, Phase-3, Tehkhand, Okhla Industrial Estate S.O. Southeast Delhi, New Delhi-110020 PAN: AARFB0027F	Vs.	Deputy Commissioner of Income Tax, Circle-28(1), New Delhi
(Appellant)		(Respondent)

Applicant/Appellant by	Sh. K. M. Gupta, Advocate
Respondent by	Ms. Ambika Aggarwal, Sr. DR

Date of hearing	04.04.2025
Date of pronouncement	04.04.2025

ORDER

PER AVDHESH KUMAR MISHRA, AM:

By way of this Miscellaneous Application ('MA'), the applicant assessee seeks rectification of mistake apparent from the record in the order dated 10.10.2023 of the Tribunal in ITA No.2253/Del/2022.

2. In the said MA, the applicant assessee has pointed out that the ground numbered 2 raised in the in ITA No.2253/Del/2022 is in respect of the disallowance of Rs.22,41,216/- made on account of bonus and employer's contribution to provident fund, which reads as under:

“2. That on the facts and in the circumstances of the case & in law, the Ld. CIT(A) grossly erred in disallowing the amount of INR 22,41,216 paid by the Appellant towards bonus and employer's contribution to provident fund, respectively, before the due date of furnishing the ROI without appreciating that the above payments within the due date for filing the return of income under section 139(1) of the Act are allowable expense under section 43B of the Act & necessary documentary evidences are placed on record in the appellate proceedings.”

3. In the said MA, the applicant assessee has pointed out that the ground numbered 2 raised in the in ITA No.2253/Del/2022 was decided by the Tribunal by restoring the issue back to the Assessing Officer ('AO') for verification and doing needful in view of the finding of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. [CA No. 2833/2016 vide order dated 12.10.2022] as under:

Provident Fund:

“5. The CPC disallowed Rs.22,41,216/- paid by the assessee being the payments made after the due date. It was submitted that the entire payments are paid within the due date prescribed under EPF Act. The AO is hereby directed to verify the details alongwith challans and allow the deduction keeping in view the judgment of Hon'ble Apex Court in the case of Checkmate Services P. Ltd. vs. Commissioner of Income Tax-I in CA No. 2833/2016 vide order dated 12.10.2022.”

4. The Ld. Counsel submitted that the disallowance of Rs.22,41,216/- pertained to the bonus and employer's contribution to provident fund. He categorically submitted that the disallowance of Rs.22,41,216/- had nothing to do with the employees' contribution to the

provident fund. Hence, the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra) would not apply in the present case. In view of the above, the said MA points out the prima-facie mistake crept in para-No. 5 of the Tribunal order dated 10.10.2023 passed in ITA No.2253/Del./2022 wherein the said issue was remitted to the AO for verification and doing needful in view of the finding of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. (supra). The Ld. Counsel prayed for recalling the appeal on this limited issue and remitting the matter back to the file of the AO for verification that whether the said disallowance of Rs.22,41,216/- was in the nature of bonus and employer's contribution to the provident fund and the same had been duly paid before filing of return of income under section 139(1) of the Income Tax Act, 1961 ('Act') and thereafter, the same should be considered for allowing it as per the law. The Ld. Counsel furnished break-up of bonus and employer's contribution to the provident fund and various additional evidence in this regard.

5. The Ld. Sr. DR seemed in agreement to the submission of the Ld. Counsel.

6. We have heard both parties and have perused the material available on records. We find merit in the submission of the Ld. Counsel that there is prima-facie mistake in the order in the case of the assessee in ITA No.2253/Del/2022 in respect of the disallowance of Rs.22,41,216/-. We, therefore, recall the appeal of the assessee in ITA

No.2253/Del/2022 on the issue of the disallowance of Rs.22,41,216/- raised in the ground No. 2.

7. After recalling the appeal as above, we heard both parties at length. Prima-facie, the issue of the disallowance of Rs.22,41,216/- raised in the ground No. 2 is not related to the employees' contribution to the PF. However, it needs detailed verification. Considering the facts of the case in entirety and in the interest of justice, we deem it fit to remit the issue of the disallowance of Rs.22,41,216/- raised in the ground No. 2 to the AO for verification of the nature of the expenditure of Rs.22,41,216/- and allow the same as per law after providing adequate opportunity of being heard to the appellant assessee. Ordered accordingly. The appellant assessee, no doubt, shall cooperate in remitted appellate proceedings.

8. In the result, the MA is allowed as above and the issue of the disallowance of Rs.22,41,216/- raised in the ground No. 2 in ITA No.2253/Del/2022 is allowed for statistical purposes.

Order pronounced in the open court on 4th April, 2025

Sd/-

**(C. N. PRASAD)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 11.08.2025.

Binita, Sr.PS

Copy forwarded to the:

1. Appellant
2. Respondent
3. CIT/PCIT
4. CIT(A)

5. Sr. DR, New Delhi

Asstt. Registrar
ITAT, New Delhi