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IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 7 OF 2023

ROHAN KORGAONKAR ... APPELLANT

Versus

DEPUTY COMMISSIONER
OF INCOME TAX ... RESPONDENTS

Ms Priyanka Kamat, Advocate for the Appellant.

Ms S. Linhares, Standing Counsel for the Respondent.

CORAM:- M. S. SONAK &
VALMIKI SA MENEZES, JJ.

DATED :- 7th February, 2024

P.C.:

1. Heard Ms Priyanka Kamat for the Appellant and Ms S. Linhares for the Respondent.
2. This is an appeal under Section 260A of the Income Tax Act, 1961 (IT Act) to challenge the orders made by the Assessing Officer, CIT (Appeals) and the ITAT, disallowing an adjustment under Section 141(1)(a)(iv) read with Section 36 (1)(va) of the IT Act in respect of delayed remittance of employees' contributions to Employee State

Insurance (ESI) and Provident Fund (PF) for the assessment year 2018-2019.

3. The ITAT, in this case, has noted that the Assesse failed to deposit contributions to ESI and PF in the employees' accounts for the relevant assessment year before the due date under the PF/ESI Acts. However, such contributions were deposited before the Assesse filed returns under Section 139 (1) of the IT Act. The ITAT relying upon the decision of the Hon'ble Supreme Court in *Chekmate Services Pvt. Ltd. & ors. V/s Commissioner of Income Tax & ors* (2022) 448 ITR 518 (SC) held that based upon such delayed deposits, no adjustments or deductions could be claimed.

4. In *Checkmate Services Pvt. Ltd.* (supra), the Hon'ble Supreme Court considered the conflicting decisions on the subject and finally held that deductions or adjustments could be claimed only when the Assesse deposits the contribution before the due date provided under the Employees Provident Fund/Employee State Insurance Act. If the employees' contributions are deposited after the due date set out under the said Act, there is no question of deduction or adjustment on the ground that such contributions were deposited before the filing of returns under Section 139(1) of the IT Act.

5. The ITAT has relied upon *Chekmate Services Pvt. Ltd. (Supra)*, and its reasoning is entirely consistent with the law laid down in

Checkmate Services Pvt. Ltd. (supra). Therefore, no case is made to interfere with the AO, CIT(appeals), and ITAT decisions.

6. However, Ms Kamat submitted that *Checkmate Services Pvt. Ltd. (Supra)* was a matter where the assessment was made under Section 143(3) of the IT Act and not under Section 143 (1) (a) as in the present case. She also relied upon *M/s P. R. Packaging Service V/s Assistant of Commissioner of Income Tax, ITA No. 2376/MUM/2022*, decided by the ITAT 07/12/2022 to support her contention.

7. Though the decision cited was that of the ITAT, we have considered the same. In our judgment, however, the fact that the assessment order in *Checkmate Services Pvt. Ltd.* (supra) was incidentally under Section 143(3) and the assessment order in the present case is under Section 143(1)(a) of the IT Act, makes no difference to the principle involved in this matter. The ITAT decision does not discuss why this circumstance constitutes a distinguishing feature based on which the ratio of *Checkmate Services Pvt. Ltd.* (supra) could be departed from.

8. *Checkmate Services Pvt. Ltd. (Supra)* holds that the deductions can be claimed or adjustments can be made under section 141(1)(a)(iv), read with Section 36(1)(va) only when the employer deposits the contributions in the employees' accounts on or before the due date

prescribed under the Employees Provident Fund /Employees State Insurance Act. In this case, admittedly, the contributions were deposited in the employees' accounts beyond the due date. The circumstance that the assessment order was made under Section 143(1)(a) of the IT Act can make no difference.

9. Therefore, in our judgment, no substantial questions of law as proposed arise in this appeal. The concurrent decisions of the three authorities call for no interference.

10. This appeal is, accordingly, liable to be dismissed and is, hereby, dismissed with no order as to costs.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.