

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA No.5654/Mum/2011
(Assessment Year: 2008-09)

C. Doctor & Co. Pvt. Ltd., S/36, 1 st Floor, Cotton Exchange Bldg., Cotton Green Mumbai - 400 033 (Appellant)	Vs.	The Assistant Commissioner of Income Tax 10(1) Aaykar Bhavan, M.K. Rd., Mumbai - 400021 (Respondent)
PAN No. AAACC2362G		

Assessee by : None
Revenue by : Shri H.M. Bhatt, Sr. DR

Date of hearing:	15-02-2024
Date of pronouncement :	15-02-2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal [ITA No. 5654/Mum/2011] is filed by M/s. C. Doctor & Co. P. Ltd. [Assessee / Appellant] against the Appellate order passed by the Commissioner of Income Tax (Appeals) 21, Mumbai [Ld. CIT(A)] dated 19.4.2011 for Assessment Year 2008-09, wherein the appeal filed by the Assessee against the assessment order passed under section 143 (3) of The Income-tax Act, 1961 (the Act) dated

07.12.2010 passed by the ACIT-10(1), Mumbai (Ld. AO) was partly allowed.

2. The Assessee is aggrieved by the assessment order and is in appeal before us. The Assessee has raised the following grounds of appeal:-

*1. a) The learned Commissioner of Income Tax (Appeals) -21, has erred in law and on facts in confirming disallowance made by the Assessing Officer of Rs. 8,14,634/-- being Employees' contribution to Provident Fund (Rs * 0.7 ,87,510/-) and contribution to Employees' State Insurance (Rs.27,124/) received from the employees which were paid belatedly but before the due date for filing the Return of Income u/s. 139.*

b) The learned Commissioner of Income Tax (Appeals) -21 has erred in law and on facts of the case in confirming the impugned disallowance in utter disregard to the ratio of the Supreme Court judgment in the case of CIT v / s Vinay Cement Limited (213 CTR 0268) and also various judgments of the ITAT and the High Courts as follows:

- i) Sai Consulting Engineers (P) Limited. v. DCIT Circle 8, Abd. ITA No. 2262/Ahd/2007.*
- ii) Sabari Enterprises 298 ITR 141 (Kar).*
- iii) George Williamson 284 ITR 619 (Gau).*
- iv) Sunil Goel v. ACIT 118 TTJ (Del) 415.*
- v) CIT v. P.M. Electronics Limited 15 DTR 258 (Delhi High Court).*
- vi) CIT v. AIMIL Limited & Ors. (2010) 35 DTR (Del) 68 (Delhi High Court).*
- vii) CIT v. ANZ Information Technology 318 ITR 123 (Karnataka).*
- viii) Additional CIT v. Vestas RRB India Limited (2005) 93 TTJ (Del) 144.*

Though the appellant had drawn attention of the learned CIT (A) to the judgments of the Supreme Court and the above-said judgments, learned CIT (A) has not at all considered the same in the appellant order.

- 2. The learned Commissioner of Income Tax (Appeals) -21 has erred in law and on facts of the case in confirming the impugned disallowance in utter disregard to the principle of judicial discipline which postulates that judgments on a point of law as laid by the High Court and Tribunal should be followed by the authorities subordinate to that High Court and the*



Appellate Tribunal. The learned CIT (A) has observed at page 4 of the appellate order appeal as under:

"In view of decision of Hon'ble Supreme Court in the case of Alom Extrusions (Supra), various benches of ITAT, Mumbai are holding that this issue has been decided by Hon'ble Supreme Court in favour of assesseees. The various benches of ITAT are holding that the employees' contribution of PF, etc. paid in Government Account before the due date of filing of return of income is allowable as deduction."

Having acknowledged the fact that various Benches of the ITAT, Mumbai are holding that employees' contribution of PF, etc. paid in government account before the due date of filing the Return of Income is allowable as deduction, the learned CIT (A) is in gross error in confirming the disallowance made by the Assessing Officer of the employees' contribution to PF and ESI which were paid before the due date for filing the Return u / s 139.

3. It is therefore, prayed that the disallowance of Rs.8,14,634/- confirmed by the CIT(A) ,may please be deleted.

3. The only ground in this appeal is with respect to confirmation of dis-allowance of Rs.8,14,634/- being Employees' contribution to Provident Fund and Employees' contribution to the State Insurance Fund deposited beyond the due date prescribed under the respective provisions of the law but before the due date of filing of return under section 139 of the Act.
4. The facts show that the Assessee is a company engaged in the business of trading of equipments and accessories. It filed its return of income on 21.11.2008 showing total income of Rs.92,50,710/-. On scrutiny, the Assessing Office found that in tax audit report employees' contribution of Rs.7,87,510/- has been paid beyond the due date prescribed under the Provident Fund Act. This is the employees' contribution, which should have been deposited before the due date prescribed under the respective Provident Fund Act. The Assessee has also

deposited Rs.27,124/- being ESIC contribution of the employee beyond the due date prescribed under the ESIC Act. Assessee submits that as both these contributions are paid before the due dates prescribed under section 139 of the Act, hence, are not dis-allowable.

5. The Assessing Officer rejected the same and made the dis-allowance of Rs.8,14,634/- by passing the assessment order under section 143(3) of the Act dated 7.12.2010.
6. The Assessee challenged the same before the Ld. CIT (A), who also confirmed the above dis-allowance. Therefore, now the Assessee is in appeal before us.
7. The Assessee has made an application on 1.7.2013 transferring the above appeal from Mumbai to Ahmedabad on the ground that the Company's registered office shifted from Mumbai to Ahmedabad. Hon'ble President as per order dated 1.12.2023 rejected such transfers and these appeals were fixed for hearing.
8. Subsequent to this order, two notices were sent at the address of the Assessee by registered post. Both the notices were returned by postal department stating that the office of the Assessee is closed. The registry does not have any alternative address of the Assessee nor had the Assessee indicated according to Rule 9(A) of the Income Tax Appellate Tribunal Rules, 1963. Therefore, these appeals are disposed off on the merits of the case as per information available on record.
9. The Ld. DR was heard. We have carefully considered the contentions raised by the Ld. DR as well as the orders of the lower authorities. We find that the Assessee has collected employees' contribution under the Provident Fund Act and ESIC



Act from its employees, however, such contributions were not deposited within due date specified under the respective Provident Fund and ESIC Act but were deposited within the due date prescribed for filing return of income. Dis-allowance was made by the Assessing Office and confirmed by the CIT (A) by looking at the provisions of Section 2(24)(x) r/w Section 36(1)(va) of the Act. Now this issue is squarely covered against the Assessee by the decision of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs.CIT(2022)143 taxmann.com 178 wherein it has been held that such sum collected from employees if not deposited within the due dates prescribed under the respective Provident Fund and ESIC Act, is dis-allowable irrespective of the fact that the same were deposited before the due dates of filing of return of income. In view of this, we did not find any merit in the appeal of the Assessee. Accordingly, Ground No.1-3 of the appeal are dismissed.

10. Accordingly, appeal of the Assessee is dismissed.

Order pronounced in the open court on 15.02.2024.

Sd/-
(NARENDER KUMAR CHOUDHRY)
(JUDICIAL MEMBER)

Mumbai, Dated: 15.02.2024

Mini Pawar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai