

ITA No. 776/KOL/2022 (A.Y. 2019-2020)

Jankalyan Vinimay Pvt. Ltd.

&

ITA No. 48/KOL/2023 (A.Y. 2019-2020)

Sunbeam Vanijya Pvt. Ltd.

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

Before Shri Rajpal Yadav, Vice-President (KZ)

&

Dr. Manish Borad, Accountant Member

**I.T.A. No. 776/KOL/2022
Assessment Year: 2019-2020**

***Jankalyan Vinimay Pvt. Ltd.,.....Appellant
10, West Ghosh Para Lane,
Jagatdal, 24-Parganas (North)-743125,
West Bengal
[PAN: AABCJ8598E]***

-Vs.-

***Deputy Commissioner of Income Tax.....Respondent
Central Circle-1(1), Kolkata,
Aayakar Bhawan (Poorva),
110, Shanti Pally,
Kolkata-700107***

&

**I.T.A. No. 48/KOL/2023
Assessment Year: 2019-2020**

***Sunbeam Vanijya Pvt. Ltd.,.....Appellant
21A, Shakespeare Sarani, 3rd Floor,
Kolkata-700017
[PAN: AAKCS1284P]***

-Vs.-

***Deputy Commissioner of Income Tax.....Respondent
Central Circle-1(1), Kolkata,
Aayakar Bhawan (Poorva),
110, Shanti Pally,
Kolkata-700107***

Appearances by:

Shri Miraj D. Shah, A.R., appeared on behalf of the assessee

Shri P.P. Barman, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing : January 23, 2024

Date of pronouncing the order : February 7, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeals are directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-20 dated 04.11.2022 in the case of Jankalyan Vinimay Pvt. Ltd. (PAN:AABCJ8598E) and dated 14.12.2022 in the case of Sunbeam Vanijya Pvt. Ltd. (PAN:AAKCS1284P) for assessment year 2019-20 in both the appeals.

2. Though the assessee has taken four grounds in each appeal. They have taken one additional ground of appeal, whereby they have contended that disallowance made by the Id. Assessing Officer under section 143(1)/143(1)(a) is beyond the scope of *prima facie* adjustment.

3. In brief, the grievance of both the assesseees is that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.1,77,55,593/- in the case of Jankalyan Vinimay Pvt. Ltd.) and Rs.1,08,57,982/- in the case of Sunbeam Vanijya Pvt. Ltd. Both these disallowances have been made by the ld. Assessing Officer under section 143(1) of the Income Tax Act on the ground that both the assesseees have failed to make payments of employees' contributions to P.F. & ESI within the due date provided under those Acts.

4. Dissatisfied with this *prima facie* adjustment, both the assesseees carried the matter in appeals before the ld. CIT(Appeals). The ld. CIT(Appeals) following the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178 confirmed the disallowances.

5. Before us, ld. Counsel for the assesseees has raised an additional argument. He submitted that when assesseees have filed the returns, at that point of time, the decision of the Hon'ble Jurisdictional High Court was in favour of the assessee in the case of CIT -vs.- Vijayshree Limited reported in 43 taxmann.com 396. The Hon'ble Supreme Court has subsequently decided the issue against the assessee. Therefore, at that point of time, there was no debate to make a disallowance. The

order of ld. Assessing Officer passed under section 143(1) is erroneous. He further contended that since no disallowance could have been made when impugned order under section 143(1) was passed, therefore, ld. CIT(Appeals) ought to have deleted the disallowances. The benefit of Hon'ble Supreme Court's decision cannot be extended to the ld. Assessing Officer for curing the error committed by him. In his next fold of submission, he contended that since the decision of the Hon'ble Jurisdictional High Court was in favour of the assessee, therefore, it could be at the most a debatable issue and disallowance under section 143(1) could not be made. He relied upon the judgment of the Hon'ble Jurisdictional High Court in the case of Principal CIT-1, Kolkata -vs.- M/s. SPPL Property Management Pvt. Ltd. rendered in ITAT No.49/2023 IA No.GA/1/2023, GA/2/2023. He placed on record copy of this judgment, which is reported in 2023(4) TMI 247. He submitted that in this case, ld. Commissioner took cognizance under section 263 of the Income Tax Act on three issues. This order of ld. CIT was set aside by the Tribunal. One of the issues on which ld. Commissioner took cognizance under section 263, was that assessee did not make payment of employees' contributions within due date and, therefore, ld. Assessing Officer ought to have disallowed the claim of assessee. The ld. CIT was of the view that non-

disallowance of employees contribution not paid in the respective accounts within the due date amounts to an error crept in the assessment order, which has caused prejudice to the revenue.

6. Against the order of the Tribunal, Revenue took the matter in the Hon'ble High Court and before the Hon'ble High Court, it was contended by the Revenue that the issue has been decided in favour of the Revenue by the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178, therefore, it be construed that the issue was not debatable and disallowance under section 143(1) could be made.

7. On the other hand, ld. D.R. relied upon the judgment of the Hon'ble Supreme Court.

8. We have duly considered the rival contentions and gone through the record carefully. As far as the judgment of the Hon'ble Calcutta High Court in the case of Principal CIT-1, Kolkata -vs.- M/s. SPPL Property Management Pvt. Ltd. is concerned, it is not applicable on the facts in the hands. Ld. Commissioner took cognizance under section 263 on 08.11.2021. The decision of the Hon'ble Supreme Court was not available

on that day. The ld. Commissioner was examining on that day whether the disallowance not made by the ld. Assessing Officer under section 36(1)(va) was prejudicial to the interest of revenue or not. The Hon'ble High Court was examining the correctness of the view formulated by the ld. CIT on 08.11.2021 and held that since judgment of the Hon'ble Jurisdictional High Court was in favour of the assessee, therefore, on 08.11.2021 it cannot be construed that action of the ld. Assessing Officer is erroneous and prejudicial to the interest of Revenue. Considering that aspect, Hon'ble High Court did not interfere in the order of the Tribunal.

9. It is pertinent to observe that a Court decides a dispute between the parties. The cause can involve the decision on facts. It can also involve a decision on points of law. Both may have bearing on the ultimate result of the case. When a Court interprets a provision, it decides as to what is the meaning and effect of the words used by the legislature. It is a declaration regarding the statute. In other words, the judgment declares as to what the legislature had said at the point of promulgation of the law. The declaration is – this was the law, this is the law, and this is how the provision shall be construed. Therefore, after the decision of the Hon'ble Supreme

Court, it is to be construed that if employees' contribution is not being paid to the respective PF & ESI Acts, then, deduction cannot be claimed by an assessee. It cannot be justified on the strength of the date of the decision of the Hon'ble Supreme Court. Therefore, Id. CIT(Appeals) has rightly rejected the claim of the assesseees.

10. In the next fold of submission, it was contended that disallowance u/s 143(1) of the Act ought to have not been made because it was a debatable aspect. In this regard we are of the view that the returns of the assessee have been processed in the Computer Processing Centre (CPC). If the Auditors have reported in the Audit Report that employees' contribution have been deducted by the assessee from the salaries of the employees but not deposited within due date provided under PF&ESI Act then as per the law laid down by the Hon'ble Supreme Court there was no debate. The stand of the Department was continuously similar to the effect that deduction is not admissible to an assessee. The Courts have interpreted before the decision of the Hon'ble Supreme Court that if such payments are made before the due date of filing of the return, disallowance is not to be made. The disallowances are being deleted by Appellate Authority following the decisions of the Hon'ble High

Courts. As far as the assessing officer is concerned or CPC is concerned, they are the authority who built their case and made their claim until the law is ultimately settled. Therefore, according to the Revenue there was no debate on this point at the level of the assessing officer. At the time litigation raised to the level of CIT(A), Hon'ble Supreme Court has decided the position of law. Therefore, there is no merit in this fold of contention also.

11. In the result, both the appeals of assesseees are dismissed.

Order pronounced in the open Court on 07/02/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 7th day of February, 2024

*Copies to :(1) Jankalyan Vinimay Pvt. Ltd.,
10, West Ghosh Para Lane,
Jagatdal, 24-Parganas (North)-743125,
West Bengal*

*(2) Sunbeam Vanijya Pvt. Ltd.,
21A, Shakespeare Sarani, 3rd Floor,
Kolkata-700017*

*(3) Deputy Commissioner of Income Tax,
Central Circle-1(1), Kolkata,
Aayakar Bhawan (Poorva),
110, Shanti Pally, Kolkata-700107*

*(4) Commissioner of Income Tax (Appeals),
Kolkata-20;*

(5) CIT- , Kolkata;

(6) The Departmental Representative;

(7) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.