IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY ,THE SIXTEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE AND THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL NO: 129 OF 2024

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 13.03.2024 passed in ITA No. 94/Hyd/2024 for the Assessment year 2019-20 on the file of the Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad preferred against the Order dated 18.12.2023 passed in PAN No. AAICS7410H on the file of the Commissioner of income Tax, Appeal Addl/JCIT (A) – 1, Bengaluru preferred against the Order dated 18.05.2020 passed in PAN No. AAICS7410H on the file of the Centralized Processing Center, Income Tax Department, Bengaluru.

Between:

Synergies Castings Ltd. Hyderabad, Flat No.4A, D.No.6-3-855/10/A, Sampathji Apartments, Sadat Manjil, Ameerpet, Hyderabad

...Appellant

AND

Asst. C. I. T., Circle 3(1) Hyderabad ACIT, Circle 3(1) Signature Towers, Opp. Botanical Gardens, Serilingampally (M), Ranga Reddy District, Hyderabad - 500084

...Respondent

Counsel for the Appellant : Mr. K.V.S. Vishnu Ram, representing M/S. Harsheet Reddy Law Firm

Counsel for the Respondent : None appeared

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

I.T.T.A.No.129 of 2024

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. K.V.S.Vishnu Ram, learned counsel appears for M/s. Harsheet Reddy Law Firm, learned counsel for the appellant.

2. Heard on the question of admission.

3. This appeal under Section 260A of the Income Tax Act, 1961 (for short the 'Act') has been filed against order dated 13.03.2024, passed by the Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad (for short 'the Tribunal').

4. The subject matter of the appeal pertains to the assessment year 2019-2020.

5. Facts giving rise to filing of this appeal in a nutshell are that the appellant (hereinafter referred to as 'the assessee') filed

returns of income for the assessment year 2019-2020 on 22.11.2019. In the returns, the assessee disclosed the income as NIL after claiming set off and brought forward the loss of Rs.16,60,58,649/-. Notice under Section 143(1)(a) of the Act was issued to the assessee proposing to disallow the deduction of a sum of Rs.1,85,76,482/- towards delayed payment of employees contribution to Provident Fund (PF) and Employees' State Insurance (ESI). In response, the assessee filed a reply wherein it was stated that delay in depositing amounts within the due dates prescribed under the respective Acts is due to reasons beyond the control. It was further pointed out that the amount due was paid before the date of filing of the return of income and therefore, requested for deduction of the said expenditure.

6. An intimation under Section 143(1) of the Act was issued to the assessee on 18.05.2020 by which a sum of Rs.1,85,76,482/- was disallowed on account of assessee's

contribution under the ESI and PF and the total income of the assessee was determined at Rs.1,85,76,482/- and the tax payable on this income was computed at Rs.55,72,944/-. The credit of TDS of Rs.72,87,370/- was allowed and the refund was determined at Rs.11,61,797/-.

7. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'). The CIT(A), by order dated 18.12.2023, dismissed the appeal. The assessee thereupon approached the Tribunal. The Tribunal, by the impugned order dated 13.03.2024, *inter alia* held that the issue involved in the appeal is covered by a decision of the Supreme Court in **Checkmate Services (P) Ltd. v. CIT**[1] and held that since the assessee had not remitted the employees' contribution to PF and ESI within the statutory dates, the amount cannot be claimed as a deduction. It was further held that, admittedly, the assessee had not deposited the employees' PF and ESI

[1] (2022) 448 ITR 518 (SC)

within the statutory dates but has deposited the same beyond the statutory dates. Accordingly, the Tribunal dismissed the appeal preferred by the assessee. Hence, this appeal.

8. Learned counsel for the assessee submitted that the issue involved in the appeal has not attained finality and is debatable. Therefore, the appeal should be admitted.

9. We have considered the submission made by learned counsel for the assessee and have perused the record.

10. The Supreme Court, in **Checkmate Services (P) Ltd.** (supra), in paragraph 52, has held as under:

> "When Parliament introduced Section 43B of the Income Tax Act, 1961, what was on the Statute Book, was only employer's contribution (Section 34(1)(iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law, it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting Section 36(1)(va) and simultaneously inserting the

second proviso of Section 43B, its intention was not to treat the desperate nature of the amounts, similarly. As discussed previously, the memorandum introducing the Finance Bill clearly stated that the provisions – especially second proviso to Section 43B – was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, *etc.*) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24)(x) too, deems amount received from the employees (whether the amount is received from the employee or by way of deduction authorized by the stature) as income – it is the character of the amount that is important, *i.e.,* not income earned. Thus, amounts retained by the employer from out of the employee's income by way of deduction *etc.* were treated as income in the hands of the employer. The significance of this provision is that on the one hand, it brought into the fold of "income" amounts that were receipts or deductions from employees' income, at the time, payment within the prescribed time – by way of contribution of the employees' share to their credit with the relevant fund is to be treated as deduction (Section 36(1)(va)). The other important feature is that this distinction between the employers' contribution (Section 36(1)(iv)) and employees'

contribution required to be deposited by the employer (Section 36(1)(va)) was maintained – and continues to be maintained. On the other hand, Section 43B covers all deductions that are permissible as expenditures, or out-goings forming part of the assessees' liability. These include liabilities such as tax liability, cess duties *etc.*, or interest liability having regard to the terms of the contract. Thus, timely payment of these alone entitle an assessee to the benefit of deduction from the total income. The essential objective of Section 43B is to ensure that if assessees are following the mercantile method of accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary pre-condition for allowing the expenditure."

11. The relevant portion of Para 54 is extracted below for the facility of reference:

"In the opinion of this Court, the reasoning in the impugned judgment that the *non-obstante* clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified."

12. Thus, from a perusal of the aforesaid relevant extracts of the decision of the Supreme Court in **Checkmate Services (P) Ltd.** (supra), it is evident that the assessee has to make payment of the contribution to PF and ESI before the statutory dates in order to claim the amount as deduction. Admittedly, the assessee has not paid the aforesaid amount on or before the statutory dates. The findings of fact has been recorded by the assessing officer, CIT(A) as well as by the Tribunal. The aforesaid finding of fact cannot, by any stretch of imagination, be said to be perverse.

13. It is not the case of the assessee that the aforesaid finding of fact is perverse. It is well settled in law that this Court, in exercise of powers under Section 260A of the Act, cannot interfere with the finding of fact until and unless the same is demonstrated to be perverse. (see **Syeda Rahimunnisa vs.**

Malan Bi by LRs[2] and Principal Commissioner of Income Tax, Bangalore vs. Softbrands India Private Limited[3]).

14. In view of the preceding analysis, no substantial question of law arises for consideration in this appeal. The same fails and is, hereby, dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad
2. The Commissioner of income Tax, Appeal Addl/JCIT (A) – 1, Bengaluru
3. The Centralized Processing Center, Income Tax Department, Bengaluru.
4. One CC to M/S. Harsheet Reddy Law Firm, Advocate [OPUC]
5. Two CD Copies

Njb/gh

[2] (2016) 10 SCC 315
[3] (2018) 406 ITR 513

HIGH COURT

DATED:16/12/2024

JUDGMENT

ITTA.No.129 of 2024

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