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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 538/2024 & CM APPL. 62092/2024

VIKAS JOSHI .....Appellant

Through: Mr. Kirti Uppal Senior Advocate with Ms. Mishika Pandita, Mr. Yash Narain and Mr. Ravi Rai, Advocates

versus

INCOME TAX OFFICER .....Respondent

Through: Mr. Puneet Rai, Senior Standing Counsel with Mr. Ashvini Kumar, Mr. Rishabh Nangia, Junior Standing Counsels

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **24.10.2024**

1. The appellant (hereafter *the assessee*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 30.11.2023 passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 2241/DEL/2023 captioned ***Vikas Joshi v. Income Tax Officer***.

2. The assessee had preferred the aforesaid appeal against an order dated 19.06.2023 passed by the Commissioner of Income Tax (Appeal) [hereafter *CIT(A)*] upholding the assessment order dated 21.11.2022 framed by the Assessing Officer (hereafter *AO*) under Section 143(1) of the Act.

3. In terms of the said assessment order, the AO had made disallowance of the sum of ₹67,93,047/- under Section 36(1)(va) of the Act. The said sum

comprised of disallowance on account of deposit of the employees share of PF amounting to ₹63,24,102/- and the disallowance of the employees contribution of ESI quantified at ₹4,68,945/-. The said disallowances were premised on the basis that the assessee had not deposited the employees contribution within the due date and therefore, by virtue of Section 36(1)(va) of the Act, the said amount could not be claimed as a deduction. The AO had reasoned that the employees contribution was required to be added as income as the same had not been deposited within the stipulated time.

4. As noted above, the CIT(A) upheld the said disallowances. This led the assessee to file an appeal before the learned ITAT.

5. The learned ITAT rejected the assessee's appeal referring to the decision of the Hon'ble Supreme Court in ***Checkmate Services Pvt. Ltd. v. Commissioner of Income Tax-I: 2022 SCC OnLine 1423***.

6. The assessee has projected several questions for consideration of this Court, however, the learned senior counsel appearing for the assessee has confined the present appeal to the following question:

> "A) Whether the Income tax department were not bound by the notifications issued by the Government of India, giving relaxation to establishments by extending the time to deposit the ESI/EPF contribution, when specific notifications were issued by Government of India that no penalty or interest or damage will be levied on establishments during the extended period due to the outbreak of COVID-19 pandemic."

7. It is contended on behalf of the assessee that various notifications were issued, including a notification issued by Employees' Provident Fund Organisation dated 15.05.2020 whereby the due dates for deposit of contributions was extended on account of the difficulties faced by establishments, on account of the lockdown announced under the Disaster

Management Act, 2005, due to the outbreak of COVID-19. The learned senior counsel also fairly concedes that perhaps the said notification(s) were not brought to the notice of the learned ITAT.

8. The learned counsel appearing for the Revenue submits that although due dates for deposit of contributions for some months may have been extended, there was no extension granted in respect of majority of the period relevant to the assessment year. He submits that the exercise of determining the quantum of disallowance by taking into account the notifications issued has not been undertaken. He fairly states that the matter may be remanded to the learned ITAT to consider the import of the notifications, which are now relied upon by the assessee.

9. In view of the above, the impugned order is set aside and the appeal filed by the assessee is restored before the learned ITAT to consider the appeal afresh, in light of the notifications referred to by the assessee in the present appeal.

10. The present appeal is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 24, 2024
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Click here to check corrigendum, if any