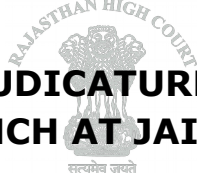


**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



D.B. Income Tax Appeal No. 329/2018

Principal Commissioner of Income Tax Jaipur -II, Jaipur

----Appellant

Versus

Rajasthan Rajya Vidyut Utpadan Nigam Ltd, Vidyut Bhawan,  
Janpath, Jaipur

----Respondent

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For Appellant : Mr. Anuroop Singhi with  
Mr. Aditya Khandelwal  
For Respondent : Mr. Prakul Khurana with  
Mr. Rajat Sharma

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**HON'BLE MR. JUSTICE AVNEESH JHINGAN  
HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**Order**

**26/09/2024**

**AVNEESH JHINGAN, J:-**

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 01.06.2018 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal').
2. The brief facts are that the respondent-company is engaged in distribution of electricity. The return for assessment year 2009-10 was filed and the assessment was finalized under Section 143(3) of the Act. The two issues arose in the assessment proceedings. Firstly, can deduction be allowed if employees' share of provident fund is deposited beyond the date stipulated in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'EPF Act') and Employees' State Insurance Act,

1948 (for short 'ESI Act'). Secondly, the effect of late deposit of TDS on claiming deduction of the expenditure.

3. The appeal filed by the respondent was accepted by the Commissioner of Income Tax (Appeal) and the appeal filed by the appellant was dismissed by the Tribunal, hence this appeal.

4. The appeal was admitted on 19.05.2023 formulating following two substantial questions of law:-

“(1) Whether the view taken by the ITAT that employees' contribution to Provident Fund and ESI is governed by the provisions of Section 43B of the Income Tax Act, 1961 and not by Section 36(1)(va) read with Section 2(24)(x) of the Income Tax Act, 1961 is sustainable in law in view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services P Ltd Vs. Commissioner of Income Tax-I (Civil Appeal No.2833 of 2016 decided on 12.10.2022)?

(2) Whether in the facts and circumstances of the case, the ITAT was justified in law in deleting addition of Rs.4987507/- made for depositing the employees' contribution to Provident Fund beyond the prescribed time limit provided in the respective Acts?

(3) Whether in the facts and circumstances of the case the ITAT was justified in law in deleting the disallowance of Rs.3581966000/- made on account of advance against depreciation deferred without appreciating that the same is a head created as an internal arrangement and does not affect the nature of receipts as revenue receipts?”

5. Heard learned counsel for the parties.

6. The substantial questions No.1 and 2 are covered by the decision of the Supreme Court in the case of ***Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1*** reported as ***(2022) 448 ITR 518***. It was held that share of the employee in the provident fund deducted by the employer, has to be deposited as per the due date fixed by the EPF Act and ESI Act concerned and not as per Section 43B of the Act. There is no leeway with the assessee in depositing of amount of employees contribution under EPF Act and ESI Act, beyond the due date as prescribed by the respective Act. It is only on the deposit in compliance with the provisions of the EPF Act and ESI Act, the retained amount is treated for deduction.

The relevant portion of the judgment is quoted below:-

**"54.** 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. The *non-obstante* clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts

which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the *non-obstante* clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as condition for deduction."

7. In view of the decision of the Supreme Court in the case of ***Checkmate (supra)*** the substantial questions No.1 and 2 are answered in favour of the appellant-Department.

8. With regard to substantial question No.3, learned counsel for the respondent submits that the question is covered by the decision of the High Court of Punjab and Haryana in the case of ***Commissioner of Income Tax, Faridabad Vs. NHPC Ltd.*** reported as ***2018:PHHC:016385-DB*** wherein the Division Bench relying upon the decision of the Supreme Court in the case of ***National Hydro Electric Power Corporation Ltd. Vs. Commissioner of Income Tax*** reported as ***(2010) 320 ITR***

**374.** It is further argued that the Department has accepted this decision.

9. It was held that Advance Against Depreciation was not income received for the relevant accounting year and cannot be carried forward through the Profit and Loss account. The question was answered in favour of the assessee.

10. Learned counsel for the appellant-Department is not in a position to distinguish the decision relied upon and to refute the fact that the decision of Punjab & Haryana High Court was accepted by the department. The substantial question No.3 is answered against the appellant-Department.

11. The appeal is accordingly disposed of.

(ASHUTOSH KUMAR),J

(AVNEESH JHINGAN),J

AARZOO ARORA /Riya/138 S.

Whether Reportable : Yes