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

% **Decision delivered on: 05.09.2023**

+ **ITA 12/2023**

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr Puneet Rai, Sr. Standing Counsel
with Mr Ashvini Kumar, Standing
Counsel and Mr Rishabh Nagia, Adv.

versus

PEPSICO INDIA HOLDING PVT. LTD. Respondent

Through: Mr Deepak Chopra with Mr Anmol
Anand, Ms Priya Tandon and Ms
Sheetal Kandpal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. We heard the matter at some length on 12.01.2023, when we had admitted the appeal and framed two questions of law.
2. On 12.01.2023 we rendered our decision with respect to the first question of law. We answered the question in favour of the appellant/revenue and against the respondent/assessee.
3. Thus, we are left with the second question of law that was framed by us on 12.01.2023.
4. For the sake of convenience, the relevant parts of the order dated 12.01.2023 are set forth hereafter:



“6. According to us, the following questions of law arise for consideration:

(i) Whether the Income Tax Appellate Tribunal [in short, “Tribunal”] misdirected itself in law in concluding that even if employees’ contribution concerning provident fund and towards insurance was deposited beyond the date prescribed under the subject statute, it would be allowable as a deduction to the employer/assessee?

(ii) Whether in the facts and circumstances of the case, the respondent/assessee could claim deduction under Section 36(1)(5)(A) of the Income Tax Act, 1961 [in short, “Act”], concerning the employees’ contribution to Provident Fund amounting to Rs. 1,56,12,404/- which was deposited on 16.08.2018, as the due date fell on a national holiday i.e., 15.08.2018?

7. The Tribunal, based on judgments which hold [sic held] the field, including the judgment rendered by a Division Bench of this Court in **Commissioner of Income Tax versus AIMIL Limited** (2010) 321 ITR 508 (Del.) and another judgment dated 10.09.2018 delivered by this Court in ITA No.983/2018, titled **PCIT vs Pro Interactive Service (India) Pvt.Ltd.**, ruled in favour of the respondent/assessee.

7.1 In sum, the Tribunal concluded, in line with the aforesaid judgments, that since the amounts in issue had been deposited before filing of income tax return under Section 139(1) of the Act, no disallowance could be made, although the deposits were not within the timeframe fixed under the statutes governing provident fund and insurance.

8. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, has drawn our attention to the judgment of the Supreme Court in **Checkmate Services P Ltd vs. Commissioner of Income Tax**, [2022] 448 ITR 518 (SC).

8.1 A careful perusal of the said judgment shows, that the Supreme Court has taken a contra view. Therefore, the view taken by the Tribunal would have to be reversed.

9. Mr Deepak Chopra, who appears on behalf of the respondent/assessee, has drawn our attention to paragraph 7 of the impugned order dated 20.06.2022 passed by the Tribunal, which adverts to the fact that the disallowance could not be made under Section 143(1) of the Act.

9.1 Furthermore, Mr Chopra has also drawn our attention to paragraph 4.2.7 of the Commissioner of Income Tax (Appeals)’s [in short, “CIT(A)”] order dated 25.03.2022, wherein, insofar as the respondent/assessee is concerned, the details of the deposits made towards provident fund and insurance are set forth. For the sake of convenience, the said table is extracted hereafter:

“Particulars	Amount (INR)	Due Date	Date of Deposition	Remarks
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<i>Employees' contribution to PF</i>	<i>1,56,12,404</i>	<i>15/08/2018</i>	<i>16/08/2018</i>	<i>Deposited on or before due date of filing the return of income under section 139(1) of the Act ie 30 November 2019"</i>
	<i>1,54,66,976</i>	<i>15/10/2018</i>	<i>16/10/2018</i>	
	<i>1,61,75,057</i>	<i>15/04/2019</i>	<i>16/04/2019</i>	
<i>Total</i>	<i>4,72,54,437</i>			

10. Based on the aforesaid extract, Mr Chopra argues that insofar as the deposit of Rs.1,56,12,404/- is concerned, the same would have to be construed as being within time, since the due date fell on a national holiday i.e., 15th August, 2018 and thus, the deposit on 16.08.2018 would have been [sic to be] construed as being within time.

10.1 In support of his submission, Mr Chopra seeks to place reliance on Section 10 of the General Clauses Act, 1897. Mr Chopra says that this ground was also raised before the Tribunal.

11. Therefore, insofar as the first submission of Mr Chopra is concerned, which is founded on a Tribunal's view that disallowances could not be made under Section 143(1) of the Act while processing refund, we are of the opinion that this argument cannot be sustained.

*The reason being that the law declared by the Supreme Court in **Checkmate Services (P.) Ltd.**'s case would be the law as it ought to have been when the provision was inserted. The judgment of the Supreme Court does not say it will apply prospectively, and therefore, the judicial view that prevailed when the Tribunal had pronounced its judgment, having undergone change, it can only be stated that the position of law was always as declared in **Checkmate Services (P.) Ltd.**, and therefore, deduction could never have been claimed by the respondent/assessee while filing the return. Accordingly, the first question of law framed is allowed in favour of the appellant/revenue, and against the respondent/assessee.*

11.1 However, that being said, what we need to consider, is the second submission advanced by Mr Chopra in the given facts of the case i.e., whether the deposit of Rs.1,56,12,404/- on 16.08.2018 was within time, given the fact that the due date fell on 15.08.2018. This issue relates to the second question of law, as framed hereinabove.

12. Accordingly, issue notice confined to the second question of law.

12.1 Mr Chopra accepts notice on behalf of the respondent/assessee."

5. Mr Deepak Chopra, learned counsel, who appears on behalf of the respondent/assessee, says that in this particular matter, since the deposit of the employee's contribution towards the provident fund was made on 16.08.2018, following a National Holiday i.e., 15.08.2018, the deduction



claimed would have to be allowed, as steps had been taken by the respondent/assessee towards the deposit of the said amount on 14.08.2018.

6. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that since the respondent/assessee had deposited the employee's contribution towards the provident fund amounting to Rs. 1,56,12,404/- on 16.08.2018, the Assessing Officer (AO) had rightly disallowed the deduction, as the due date was 15.08.2018.

7. According to us, the submission advanced by Mr Rai cannot be accepted. Since the due date fell on a date which was a National Holiday, the deposit could have been made by the respondent/assessee only on the date which followed the National Holiday.

8. Mr Chopra, as noticed on 12.01.2023, is right that Section 10 of the General Clauses Act would help the respondent/assessee to tide over the objections raised on behalf of the appellant/revenue.

9. Therefore, the second question of law, as framed via the order dated 12.01.2023, which is extracted hereinabove, is answered against the appellant/revenue and in favour of the respondent/assessee.

10. Accordingly, the appeal is closed, in the aforesaid terms.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

SEPTEMBER 5, 2023/R.Y

Click here to check corrigendum, if any