

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2254/Mum/2023
(Assessment Year: 2014-15)

KMTC (India) Private Limited 2202, 22 nd Floor, Indiabulls Finance Centre, Tower 3, Senapati Bapat Marg, Elphinstone Road (W), Mumbai-400 013	Vs.	CIT(A) Mumbai -400 020
PAN/GIR No. AAFCK 2156 D		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Tanzil R. Padvekar
Revenue by	:	Shri P. D. Chougule
Date of Hearing	:	26.10.2023
Date of Pronouncement	:	27.10.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-52, Mumbai ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has challenged the addition of Rs.4,86,368/- towards delayed deposit of employees contribution to PF and addition of Rs.3 lacs on account of preliminary expenses and deduction allowed u/s. 35D of the Act.

3. The brief facts are that the assessee is engaged in the business of customary agency services of tamper/liner vessels and act as a husbanding agent in respect of vessels owned, operated, chartered or managed by Korea Marine Transport Co. Ltd.

(KMTC Korea) and also provides auxiliary services like filing shipping documents, completing custom formalities, etc. for the customers of KMTC Korea. The assessee company filed its return of income dated 26.11.2014, declaring total income at Rs.59,36,377/- and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for complete scrutiny under CASS and assessment order dated 2.11.2016 was passed u/s. 143(3) of the Act where the Id. Assessing Officer ('A.O.' for short) determined the total income at Rs.67,93,660/- by making the impugned additions.

4. The assessee was in appeal before the Id. CIT(A), challenging the assessment order.

5. The Id. CIT(A) upheld the addition made by the Id. A.O.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. Ground no. 1 pertains to the disallowance of Rs.4,86,368/- towards delayed deposit of employees contribution to PF u/s.2(24)(x) r.w.s. 36(1)(va) of the Act. It is observed that the assessee had deposited the employee's contribution to PF for the month of November, December, 2013 and January, 2014. It was paid after the due date prescribed under relevant Acts but before filing of the return of income. The assessee contended that the reason for the delay was because the Provident Fund Department had generated the user name and password required for generating challans belatedly inspite of the assessee's request vide written submission dated 30.01.2014. The lower authorities have rejected the contention of the assessee and made a disallowance of the said amount and added the same to the total income of the assessee.

8. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee company had applied for PF registration number along with the user name and password for generating challans and had received the registration number from the Provident Fund Department on 03.01.2014. The ld. AR contended that the user name and password were furnished only on 01.03.2014 and only after that the assessee company had deposited the employee's contribution on 11.03.2014. The ld. AR stated that the delayed deposit of employees contribution was not attributable to the assessee and prayed that the said addition be deleted.

9. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and stated that it is a responsibility of the assessee to have applied for the registration number, user id and password soon after its incorporation. The ld. DR stated that the assessee has not substantiated whether it had applied for the user name registration and password without any delay. The ld. DR relied on the decision of the Hon'ble Apex Court in the case of *Checkmate Services P. Ltd. vs. CIT* (in Civil Appeal No. 2833 of 2016 vide order dated 12.10.2022).

10. We have heard the rival submissions and perused the materials available on record. It is now a settled proposition of law that the employee's contribution to PF & ESIC having been deposited belatedly after the due date prescribed under the relevant acts, nevertheless before filing of the return of income is not an allowable deduction as per the recent decision of the Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd.* (supra). In the present case in hand, though the assessee had contended that the user name and password id was furnished by the Provident Fund Department with a

delay, the assessee has not justified as to why there was a delay in requesting the PF Department for the user name and password. It is also observed that the assessee has made a written submission only on 30.01.2014 requesting for the user name and password from the PF department. As this issue of delayed deposit of PF and ESIC is no longer *res integra* subsequent to the decision of Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd.*(supra), we find no merits in the submission of the Id. AR on this ground and we, therefore, dismiss ground no. 1 raised by the assessee.

11. Ground no. 2 pertains to the disallowance of Rs.3 lacs towards consultancy fee and holding it to be preliminary expenses and allowing @ 1/5th deduction u/s. 35D of the Act. It is observed that the assessee company has been incorporated during the impugned year and had incurred consultancy fees paid to Lenus Construction Ltd. for the purpose of obtaining Department of Industries Certificate (DOI) (MMMR) Maharashtra. The Id. A.O. has disallowed the expenditure pertaining to consultancy fees on the ground that the same is of enduring benefit and had allowed 1/5th deduction u/s. 35D of the Act. The assessee contended that the said expenditure was incurred for obtaining DOI for the purpose of renting India Bulls Premises for running of its office for ITES Services. The assessee further contended that it is of revenue expenditure and not of enduring benefit as alleged by the lower authorities. The contention of the assessee was rejected and the Id. A.O. held the same to be the nature of the preliminary expenses which is to be allowed u/s. 35D of the Act and not as business expenditure.

12. The Id. CIT(A) upheld the addition made by the Id. A.O. on the ground that the assessee has failed to substantiate that obtaining DOI was prerequisite for hiring the India

Bull premises on rental basis. The ld. CIT(A) further held that the ld. A.O. has allowed deduction u/s. 35D of the Act and, hence, the same was not eligible to be a revenue expenditure.

13. We have heard the rival submissions and perused the materials available on record. The ld. AR had contended that the certificate from the DOI is mandatory for taking the office premises from India Bulls on rental basis for services. It is further observed that the assessee has incurred the impugned expenditure for the purpose of consultancy fees to Lenus Construction for obtaining the said certificate. The ld. AR had relied on the catena of decisions wherein a similar nature of expenditure has been treated as revenue expenditure which is eligible for deduction u/s. 37(1) of the Act. The lower authorities have not disputed the fact that the assessee has incurred the said expenses paid to Lenus Constructions ltd. In our considered view, the impugned expenditure will not come under the purview of section 35D of the Act and rather would be a revenue expenditure allowable as deduction u/s. 37(1) of the Act. We, therefore, are inclined to allow ground no. 2 raised by the assessee.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27.10.2023.

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 27.10.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai