

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**“SMC BENCH”**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA No. 25/SRT/2022 (AY: 2018-19)**  
*(Physical hearing)*

|   |    |                              |
|---|----|------------------------------|
| Shibendranath K. Barman,<br>Flat No.203, 2 <sup>nd</sup> Floor, Krishna<br>Regency Co. Op. HSG Societty,<br>GIDC Colony, Limbergaon,<br>Valsad-396171.<br><br><b>PAN : ALDPB9263A</b> | Vs | The DCIT, CPC,<br>Bengaluru. |
| <b>APPELLANT</b>  |    | <b>RESPONDEDNT</b>           |

|                       |                               |
|-----------------------|-------------------------------|
| Appellant by          | Shri Ketan N. Vasani, CA      |
| Respondent by         | Shri J. K. Chandnanai, Sr. DR |
| Date of hearing       | 19/10/2022                    |
| Date of pronouncement | 19/10/2022                    |

**ORDER**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, dated 09/12/2021, which in turn arises out of assessment order passed by Assessing Officer under section 143(1) dated 30/09/2018 for the Assessment Year (AY) 2018-19. The assessee has raised the following grounds:

*“1. The Id. Commissioner of Income tax Appeals), National Faceless Appeals Centre (in short "CIT(A), NFAC") erred in confirming the addition of Rs. 11,36,3077-, the payment of Employee's share of PF, on the ground that the belated payment of employee's contribution is not allowable u/sec. 36(1) (va) of the I.T., Act.*

*2. The Id. Commissioner of Income Tax (Appeals);, National Faceless Appeals Centre (in short "CIT (A), NFAC") before giving the verdict on the disputed issue failed to discuss/consider the various submissions made by the assessee on dt. 30/05/2019 and on*

*dt.20/01/2021.This way the order passed by "Ld. CIT(A), NFAC" is one sided and against all judicial norms.*

*3. The "Ld. CIT(A), NFAC" failed to adhere to the judicial discipline as laid down by the Hon'ble Bombay and Andhra Pradesh High Courts, reported in 156 ITR 11 & 169 ITR 564 respectively, for the proposition that when there are several judgments of different Hon'ble High Courts both in favour and against the Assessee, the view favorable to the Assessee is to be followed.*

*4. The "Ld. CIT (A) , NFAC" In his order relied on Amendment made in Finance Act,2021 by inserting explanation to section 36 (1) (va) and to section 43B. (Para No 4.6 and 4.7 of Order); However, this Amendment is Applicable Prospectively and Not retrospectively, I.e., applicable **W.e.f. 01/04/2021.***

*5. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the impugned disputed addition is to be deleted in the interest of justice."*

2. At the time of hearing, the Learned Authorized Representative (Ld. AR) for the assessee submits that he may be allowed to withdraw his appeal in view of the recent decision of Hon'ble Apex Court, in the case of Checkmate Services Pvt. Ltd. vs. CIT, in Civil Appeal No.2833 of 2016 wherein the Hon'ble Apex Court held that it is an essential condition for deduction of employees' contribution of ESIC and PF, are deposited on or before due date. The sole ground of appeal raised by assessee relates to disallowance of employees' contribution of Provident Fund (PF) which was deposited after due date prescribed under Provident Fund (Miscellaneous Provisions) Act.
3. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue has no objection if the appeal is dismissed as withdrawn.
4. Considering the submissions of both the parties and the appeal of the assessee dismissed as withdrawn. No order as to cost.

5. In the result, the appeal filed by the assessee is dismissed as withdrawn.

Order pronounced on 19/10/2022 at the time of hearing of appeal in the presence of parties.

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

Surat, Dated: 25/10/2022

SAMANTA

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

**// TRUE COPY //**

Asstt. Registrar, ITAT, Surat