

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 37/Jodh/2022
(ASSESSMENT YEAR-2019-20)**

Shri Aziz Khan Abu Road	Vs	The ITO Abu
(Appellant)		(Respondent)
PAN NO. AEEPK 4408 C		

Assessee By	None
Revenue By	Shri Venkatesh V (JCIT-DR)
Date of hearing	2/11/2022
Date of Pronouncement	3 /11/2022

ORDER

PER: SANDEEP GOSAIN, JM

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 15-12-2021 for the assessment year 2019-20 wherein the solitary issue of the assessee is that the Id. CIT(A) erred in sustaining the addition of Rs.8,14,651/- made by the AO on

account of employees contribution to PF & ESI which was paid before the due date of filing of return of income.

2.1 None appeared on behalf of the assessee when the case was called out for hearing. Therefore, the Bench decided to adjudicate upon the issue on merit and documents available on record.

3.1 At the time of hearing, the Bench observed that there is delay of 30 days in filing the appeal by the assessee for which the assessee mentioned the reason of his illness and submitted medical Certificate of Dr. H.K. Gauswami, M.S. (Ortho), Palanpur. However, the ld. DR objected to such delay of filing the appeal by the assessee.

3.2 After hearing the ld. DR and perusing the materials available on record, the Bench finds that the assessee is prevented by sufficient cause. Hence, the delay is condoned.

4.1 Brief facts of the case are that the assessee e-filed the return of income for the A.Y. 2019-20 on 28-10-2019 declaring total income of Rs.33,36,685/- which was processed u/s 143(1) at Rs.41,51,336/- by disallowing a sum of Rs.8,14,651/- on account of provident fund and ESI. However, the assessee filed the rectification request on 19-05-2020 u/s 154 of the Act which was rejected by the AO (ADIT, CPC, Bangalore).

4.2 In first appeal, the ld. CIT(A) confirmed the action of the AO by holding that the assessee has failed to deposit the Employee's fund in their welfare account within the time period as mentioned in Welfare's Act. Hence, the appeal of the assessee on this ground is dismissed and disallowance of Rs.8,14,651/- is upheld. Thus this ground of appeal is dismissed by the ld. CIT(A).

4.3 During the course of hearing, the ld. DR relied upon the order of the ld. CIT(A)

4.4 After hearing the ld. DR and perusing the materials available on record, it is noticed that the AO made an addition of Rs.8,14,651/- on account of failure of depositing the employees Contribution timely under PF and ESI Act by the assessee which has been sustained by the ld. CIT(A). However, the Bench noted that the assessee has deposited employees contribution towards PF & ESI before due date of filing of return. Recently, the Hon'ble Supreme Court has in the case of Checkmate Services Pvt. Ltd. Vs CIT-1, 143 Taxmann.com 178 (SC)/Civil Appeal No. 2833 of 2016 held that the provision of Section 43B of the Act shall not apply to employee's contribution to PF/ESI and the due date specified u/s 36(1)(va) of the Act shall apply for determination of deductibility of employee's contribution to PF/ESI. Accordingly, in view of the aforesaid judgement of Hon'ble Supreme Court (supra), the issue in the appeal being similar in nature is remanded back to the file of ld. CIT(A) for afresh

adjudication by providing adequate opportunity of being heard to the assessee and the assessee is directed to submit the necessary details/documents concerning the issue in question before the Id. CIT(A) in order to square up the case. Further, the assessee is also at liberty to take any other plea before the Id. CIT(A), if so advised. Thus the appeal of the assessee is allowed for statistical purposes.

5.0. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/11/2022.

Sd/-

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Dated : 03 /11/2022

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench