

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

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

ITA No. 8/Jodh/22
(ASSESSMENT YEAR- 2018-19)

Jai Prakash Ramawat Jaipur	Vs	The ADIT CPC Bangalore
(Appellant)		(Respondent)
PAN NO. AEZPR 0794 R		

ITA No. 56/Jodh/21
(ASSESSMENT YEAR- 2018-19)

M/s. Unicon Human Power Private Ltd. Udiapur	Vs	The ITO Ward 2(1) Udaipur
(Appellant)		(Respondent)
PAN NO. AABCU 4447 K		

ITA No. 132/Jodh/2022
(ASSESSMENT YEAR- 2020-21)

Highway Tyre Retread Pvt. Ltd. Udaipur	Vs	The ADIT CPC, Bangalore
(Appellant)		(Respondent)
PAN NO. AAACH 3710 Q		

Assessee By	None
Revenue By	Shri Venkatesh V (JCIT-DR)
Date of hearing	03/11/2022
Date of Pronouncement	3 /11/2022

ORDER

PER: SANDEEP GOSAIN, JM

The above mentioned appeals are filed by different assessee's against three different orders of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 10-11-2021, 1-07-2021 and 16-09-2022 for the assessment year 2018-19, 2018-19 and 2020-21 respectively confirming the addition of Rs.1,97,803/- Rs.53,59,210/- and Rs.76,790/- u/s 36(1)(va) of Income Tax Act, 1961 on account of late deposit of employees contribution towards PF and ESI Act.

1. None appeared on behalf of the above assessee's on the issue in question when the case was called out for hearing.
2. On the other hand, the Ld. DR supported the orders of the Ld. CIT(A), National Faceless Appeal Centre, (NFAC) Delhi.
3. After hearing the Ld. DR and perusing the materials available on record, the Bench noticed that the AO made the addition of Rs.1,97,803/-

Rs.53,59,210/- and Rs.76,790/- u/s 36(1)(va) of Income Tax Act, 1961 on account of late deposit of employees contribution towards PF and ESI Act by the above mentioned assessee's, holding it deemed income and subjected to tax in the hands of the employer which in first appeal was confirmed by the Id. CIT(A) by holding that the said late payments are not covered under section 43B of the Act and thus the Id. CIT(A) dismissed this ground of the respective assessee's. However, it is 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 these appeals being similar in nature are remanded back to the file of Id. 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 these appeals of above mentioned assessee are allowed for statistical purposes.

4.0. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 3/11/2022 .

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Dated : 3/11/2022

**Mishra*

Copy to:

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

Asstt. Registrar

Jodhpur Bench