

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT  
“SMC” BENCH  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA Nos.255 & 256/SRT/2022**

(AY 2018-19)

(Hearing in Physical Court)

Jeshuben Dineshbhai Patel ( <b>Prop. of Mayur Engineering Services</b> ) 1 Mata Faliya, AT & P.O. Hazira, Tal:Choryasi, Surat-394270 <b>PAN NO: BHFPP 9933 E</b>	Vs	Deputy Commissioner of Income Tax, CPC-Bangluru
Chetakkumar Kanubhai Patel ( <b>Prop of C.K. Enterprise</b> ) 51, Magdalla City, AT & P.O. Magdalla, Surat-395007 <b>PAN NO: CMAPP 3368 N</b>		
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारित की ओर से /Assessee by	Shri Deven Kapadia, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	28.12.2022
उद्घोषणा की तारीख/Date of pronouncement	28.12.2022

**Order under section 254(1) of Income Tax Act**

**Per PAWAN SINGH JUDICIAL MEMBER;**

1. These two appeals by different assesseees are directed against the separate orders of ld. National Faceless Appeal Centre [for short to as “NFAC / or CIT(A)” dated 20.07.2022 and

29.07.2022 for same assessment year (AY) 2018-19, which in turn arise out separate assessment orders passed by Dy, Commissioner, Centralized Processing Centre (in short “CPC”), Bengaluru under section 143(1) of the Income Tax Act, 1961 (‘the Act’) vide their respective order dated 17.05.2019 & 26.04.2019.

2. In both the appeals, the assessee has raised certain common grounds of appeals except variation of addition on account of disallowance of employee’s contribution to Provident Fund and ESIC, thus, both the appeals are clubbed, heard together and are decided by consolidate order to avoid the conflicting decision. For appreciation of fact, the appeal in ITA No. 255/SRT/2022 is treated as **‘lead’** case, wherein the assessee has raised following grounds of appeal:

*“1. The Learned CIT(A) has erred both in law and on ethe facts of the case in confirming the addition made u/s 36(1)(va) of the Act in respect of the employees contribution towards PF/ESIC in spite of the fact that the same has been deposited before due date as specified u/s 43B of the Act.*

*2.The learned CIT(A) has erred both in law and on the facts of the case in confirming the addition made u/s 36(1)(va) of the Act of Rs.9,83,281/- by wrongly considered information provided in point no. 20(b) of tax audit report as disallowance made by the auditor.*

3.The learned CIT(A) has erred in law and on facts in confirming the action of the Ld AO by wrongly making the addition made u/s 36(1)(va) while finalizing the assessment order, without properly interpreting the explanatory memorandum to the finance Act, 2021 whereby the legislature itself has condoned the impugned default before 01-04-2021 by proposing amendment in both the Sections i.e 36(1)(va) and 43B of the Act.

4. The Ld. CIT(A) has erred in law and facts and in circumstances of the assessee by confirming disallowance made u/s 36(1)(va) of the Act since the appellant is entitled to make payment of employees contribution together with employer contribution and administrative charges within 15 days of the close of the “**month**” during which the disbursement of salary / wages is actually made and not from the month to which wage relates.

5.Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring submission/s, explanations and information submitted by the appellant which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and **Principles of Natural Justice** and therefore deserves to be **quashed**.

*The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal”*

3. Brief facts of the case are that the assessee filed its return of income for A.Y. 2018-19 on 24.05.2019 declaring income of Rs.9,53,290/-. The return was processed by the Central Processing Centre, Bangalore (CPC). The CPC while processing the return, made disallowance of deduction of expenditure

claimed on account of employee's contribution to provident fund and ESIC of Rs.23,53,490/-.

4. Aggrieved by the order of CPC, the assessee filed appeal before the ld. CIT(A). before ld CIT(a), The assessee filed his detailed written submission. The ld. CIT(A)/ NFAC after considering the submissions of assessee held that an amount of Rs. 13,70,210/- was paid within due date, however, only Rs. 9,83,281/- on account of employee's contribution was delayed by one and half month. Thus, the ld CIT(A)N granted partial relief to the assessee. Further aggrieved, the assessee has filed the present appeal before this Tribunal.

5. I have heard the submissions of learned Authorised Representative (ld. AR) and the learned Senior Departmental Representative (ld. Sr. DR) for the revenue. At the outset of hearing, the ld. Sr. DR for the revenue submits that the grounds of appeal raised by the assessee is covered against the assessee by the latest decision of Hon'ble Supreme Court in the case of Checkmate Services P Ltd. Vs CIT-I in Civil Appeal No. 2833 of 2016 dated 12/10/2022, wherein it is held that essential condition for deduction of such amounts are

deposited on or before due date (under statutory provisions under such Acts).

6. The ld AR for the assessee after hearing the submissions of ld SR DR for the revenue fairly agreed that on merit the grounds of appeal are covered by the latest decision of Hon'ble Apex Court Order in Checkmate Services P Ltd. Vs CIT (supra). However, the ld AR for the assessee submits that CPC has no power to make prima facie adjustment under section 143(1)(a) for making such disallowances as the same does not falls in the preview of the adjustment permitted under this section.
7. I have considered the submission of both the parties. I find that there was delay in deposits of employee's contribution of PF and ESI. Such contribution was deposited beyond the due date prescribed under the relevant statutory provisions. I find that the grounds of appeal raised by assessee is covered against the assessee by the decision of Hon'ble Supreme Court in Checkmate Services P Ltd. Vs CIT-I (supra). The Hon'ble Supreme Court held that that essential condition for deduction of such amounts are that employee's contributions are deposited on or before due date under statutory provisions

under such Acts. It was further held that non *obstante* clause under section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as condition for such deduction. So far as the technical objection of Id AR for the assessee is concerned that CPC has no power to make any such prima facia adjustment, I am not convinced to such submissions that once, the assessee itself reported in its Audit Report that employee's contributions of ESI & PF was deposited beyond the date prescribed in the relevant statutory provision, CPC will certainly have to make such disallowances.

8. In view of the aforesaid factual and legal position, I do not find any merit in the grounds of appeal raised by assessee and I dismiss the same.
9. In the result, appeal of the assessee is dismissed.

**ITA No.256/SRT/2022 (AY 18-19)**

10. As recorded above the assessee in this appeal has raised similar ground of appeal except variation in figure of addition under section 36(1)(va) of Rs. 525,917/-. Thus, following the principle of consistency, this appeal of assessee is also

dismissed with similar observation as taken in ITA No.255  
/SRT/2022.

11. In the result, the appeal of the assessee is dismissed.
12. In combined result, both the assessee's appeals are dismissed. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in the open court on 28/12/2022.

Sd/-  
**(PAWAN SINGH)**

[न्यायिक सदस्य JUDICIAL MEMBER]

सूत /Surat, Dated: 28/12/2022

*Dkp. Out Sourcing Sr.P.S*

Copy to:

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

By order

// True Copy //

Sr.P.S./Assistant Registrar, ITAT, Surat