

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2788/MUM/2022  
Assessment Year: 2017-18**

B.E. Billimoria & Company Ltd.,  
Shiv Sagar Estate, Block-A 2<sup>nd</sup>  
floor, DR. A.B. Road, Worli  
Mumbai-400018.

**PAN No. AAACB 1542 P  
Appellant**

**Vs.** The Dy. CIT, Circle-1(1)(1),  
Aayakar Bhavan, Maharshi  
Karve Road,  
Mumbai-400020.

**Respondent**

Assessee by : None  
Revenue by : Mr. Chetan M. Kacha, DR

Date of Hearing : 26/12/2022  
Date of pronouncement : 29/12/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 29.09.2022 passed by the Ld. Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

- 1. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, has erred in confirming the disallowance of ₹ 1,26.047/- u/s 144 r.w.r 8D ignoring the*



*fact that the same is already disallowed in the Computation of Income, resulting same disallowance made twice.*

*2. The Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, has erred in disallowing Employee Provident Fund & ESI amounts of Rs 83,06,053/- on ground that the amounts were not paid within the due dates under the respective Act, in spite of the fact that the amounts were paid before the due date of filing of the tax return u/s 139 of the Income Tax Act, 1961.*

2. Briefly stated, facts of the case are that the assessee filed return of income declaring total loss of ₹1,14,98,11,690/-. The return of income filed by the assessee was selected for scrutiny and disallowance u/s 14A of the Income-tax Act, 1961 (in short 'the Act') r.w.r. 8D amounting to ₹1,26,047/- and for delayed payment of ESI/PF of ₹83,06,053/- u/s 36(1)(va) of the Act was made by the Assessing Officer. On further appeal, the Ld. CIT(A) upheld the disallowance. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. As far as ground No. 1 of the appeal is concerned, in the ground it is submitted that disallowance of ₹1,26,047/- u/s 14A r.w.r. 8D was also disallowed in the computation of the income and therefore, it is double disallowance. Since, this is a matter of verification therefore, we restore this issue to the file of the Assessing Officer for verifying



and decide accordingly. The ground is allowed for statistical purposes.

3.1 As far as ground No. 2 of the appeal is concerned the Hon'ble Supreme Court in the case of **Checkmate Services P. Ltd. v. Commissioner of Income-tax -I in Civil Appeal No. 2833 of 2016 in decision dated 12<sup>th</sup> October, 2022** has held that delayed payment of ESI/PF are liable for disallowance in terms of section 36(1)(va) of the Act. Respectfully following the finding of Hon'ble Supreme Court (supra), the disallowance made by the Ld. CIT(A) on the issue-in-dispute is upheld.

4. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced under Rule 34(4) of the ITAT Rules, 1963 on 29/12/2022.**

**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 29/12/2022  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai



6. Guard file.

//True Copy//

BY ORDER,  
(Sr. Private Secretary)  
**ITAT, Mumbai**