

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA Nos. 164/Jodh/2022
(ASSESSMENT YEARS- 2017 -18)**

M/s A Infrastructure Limited 1, Hamirgarh, Bhilwara-311001.	Vs	DCIT, CPC, Bangalore.
(Appellant)		(Respondent)
PAN NO. AABCA 7493 D		

**ITA Nos. 165/Jodh/2022
(ASSESSMENT YEARS- 2019-20)**

M/s A Infrastructure Limited 1, Hamirgarh, Bhilwara-311001.	Vs	ACIT, CPC, Bangaluru.
(Appellant)		(Respondent)
PAN NO. AABCA 7493 D		

**ITA Nos. 166/Jodh/2022
(ASSESSMENT YEARS- 2020-21)**

M/s A Infrastructure Limited 1, Hamirgarh, Bhilwara-311001.	Vs	Asst. Director of Income Tax, CPC, Bengaluru.
(Appellant)		(Respondent)
PAN NO. AABCA 7493D		

Assessee By	Shri Rajendra Jain (Adv.)
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	16/01/2023
Date of Pronouncement	20/01/2023

ORDER**PER: Dr. S. Seethalakshmi, JM**

These are three appeals filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as “NFAC”), Ld. CIT(A) for the assessment years 2017-18, 2019-20 & 2020-21 dated 17.10.2022 and 18.10.2022 respectively. Since the issues involved are common in all the appeals were heard together, therefore, these are being disposed off by this common order for the sake of convenience and brevity.

2. We take ITA No. 164/Jodh/2022 for the A.Y. 2017-18 wherein following grounds have been raised by the assessee:-

“1. That on the facts and in the circumstances of the case, the CIT/NFAC has grossly erred in upholding the validity of order u/s 143(1) by rejecting the order u/s 154 of the Act.

2. That on the facts and in the circumstances of the case the ld. CIT(A), NFAC erred in upholding the validity of order passed by the Ld. AO u/s 154 of the Act.

3. That on the facts and in the circumstances of the case the CIT(A) NFAC grossly erred in confirming addition which are outside the preview of section 143(1) of the Act.

4. That on the facts and in the circumstances of the case the CIT(A) NFAC grossly erred in sustaining the addition made by the ld. AO u/s 154 which is not only contrary to provisions of the law but also against the settled law.

5. That on the facts and in the circumstances of the case the CIT(A) NFAC grossly erred in sustaining addition of Rs. 10,51,408/- in respect contribution to ESI & PF.

6. That the petitioner pay kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

7. The petitioner pays for justice & relief.”

3. Briefly the facts of the case are that the assessee filed its return of income on 30.10.2017 declaring total income of Rs. 38,98,780/- which was processed U/s 143(1) of the Income Tax Act and in terms of intimation dated 17.12.2019 issued by CPC, it made disallowance of Rs. 110,51,408/- towards employee's contribution towards ESI and PF. On appeal, the ld. CIT(A), NFAC has confirmed the disallowance made U/s 143(1) on account of assessee's failure to pay the employee's contribution of PF/ESI within the prescribed due dates as per Section 36(1)(va) of the Act.

4. Now the assessee is in appeal.

5. During the course of hearing, ld. AR for the assessee submits that the assessee has filed written submission along with tax audit report but the ld. CIT(A)/NFAC has grossly erred in sustaining the addition of Rs. 10,51,408/- in respect of delay payment of contribution employees towards PF and ESI,

where the addition is not on account of disallowance on expenditure indicating in the audit report but not taken into account computing in the total income in the return as per section 143(1)(a)(iv) of the Act.

6. The ld. Sr. DR relied upon the orders of the lower authorities and contended that the lower authorities has passed the order on merit and Ld DR strongly placing reliance on the recent decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Limited Vs. CIT in Civil Appeal No. 2833 of 2016 dated 12.10.2022, the impugned order disallowances to be dismissed.

7. We have considered the rival contention and perused the orders of the authorities and the material available on record. We note that the assessee seeks to raise certain legal grounds. Hence, we are of the view that all issues may be restored to the file of the AO for examine the issues that may be urged by him. Accordingly, we set aside the order of the ld. CIT(A) and restore all issues to the file of the Ao for verification and fresh hearing by providing adequate opportunity to the assessee. Thus the appeal of the assessee is allowed for statistical purposes as per direction mentioned above.

8. In ITA Nos. 165 & 166/Jodh/2022 pertaining to A.Y 2019-20 & 2020-215, both the parties fairly submitted that the facts and circumstances of the case are exactly identical to the facts and circumstances of the case in ITA No. 164/Jodh/2022, therefore, our findings and directions contained therein shall apply *mutatis mutandis* to these appeals.

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

Order pronounced in the open Court on 20/01/2023.

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

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated :20 /01/2023

**Santosh*

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