

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 2660/Del/2022
(Assessment Year : 2020-21)

Randhir Rana C/o. Advocate-Vijay Kumar Gupta, Opp. Jain Mandir, Main Bazar, Ballabgarh, Haryana-04 PAN No. ABSPR 8764 K (APPELLANT)	Vs.	ITO Ward – 2(1), Faridabad (RESPONDENT)
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Assessee by	Shri Vijay Kumar Gupta, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	15.12.2022
Date of Pronouncement:	19.01.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals), Delhi, dated 28.09.2022 in DIN and Order No. ITBA/NFAC/S/250/2022-23/1046050593(1), relating to the A.Y. 2020-21 passed under section 250 of the I.T. Act, 1961.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is an individual who stated to be a proprietor of M/s. Rase Engineering Works, Faridabad. Assessee electronically filed his return of income for A.Y. 2020-21 declaring total income at Rs.44,27,160/-. In the intimation order issued u/s 143(1) of the Act dated 16.12.2021 vide Demand Reference No.2021202037029220653T the total income was computed at Rs.48,64,420/- by *inter alia* disallowing Rs.4,37,262/- on account of delayed payment of Employees' Contribution to funds u/s 36(1)(va) of the Act. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee filed appeal before NFAC wherein the assessee *inter alia* submitted that though there was delay in payment of PF & ESIC dues but however same was deposited before the filing of return of income and therefore, relying on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Pro Interactive Services (India) Pvt. Ltd. and other decisions submitted that the addition be deleted. The contentions of the assessee was not found acceptable and therefore the order of AO was upheld. Aggrieved by the order passed by NFAC, assessee is now before the Tribunal and has raised the following grounds:

- “1. *That the issue involved in the present case being debatable/controversial and having conflicting judicial opinions, no addition on such issue could be made u/s 143(1) of the IT Act, 191 in the returned income. Such addition could be made only by issuing notice u/s 143(2) for framing of scrutiny assessment u/s 143(3) of the Act.*
2. *That in the present case, claim of belated payments of employees' contribution by the employer as per the dates prescribed under the respective Acts of ESI and EPF, but such payments were made prior to the date of filing of return of income u/s 139(1) of the IT Act could not be disallowed in the present case fall under the territorial jurisdictional of the state of Haryana as the Hon'ble*

jurisdictional Punjab and Haryana High Court decided the issue in question in favour of the assessee and against the Revenue.

3. *That the appellant craves leave to add, amend, revise, modify, substitute or delete any or all grounds of appeal or/and prayer made.”*

4. Before me, at the outset, Learned AR submitted that though the assessee has raised various grounds, but the sole controversy is with respect to the disallowance of delayed deposit of employees dues.

5. Before me, Learned AR reiterated the submissions made before lower authorities and further submitted that since the amounts pertaining to employees dues have been deposited with the appropriate authorities before the due date of filing of return of income, the AO was not justified in disallowing the payment u/s 36(1)(va) of the Act. In support of his contention he relied on various decisions of Tribunal and Delhi High Court.

6. Learned DR on the other hand submitted that in view of the decisions of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. and others vs. CIT & others (2022) 448 ITR 518 (SC)** no interference to the order of lower authorities is called for.

7. I have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to the disallowance u/s 36(1)(va) of the Act on account of delayed deposit of employees' contribution of PF/ESI. It is an undisputed

fact that the amount of PF/ESI contribution of employees pertaining to various months was deposited after the due date prescribed under the statute but however they were deposited before the due date of filing of return of income. I find that Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd. (supra)** has held that the contribution by the employees to the relevant funds is the employer's income u/s 2(24)(x) of the Act and the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective Acts. Thus the deduction u/s 36(1)(va) of the Act can be allowed only if the employees' share in the relevant funds is deposited by the employer before the due date stipulated in respective Acts. I, therefore, following the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) find no reason to interfere with the order of lower authorities and **thus the grounds of assessee are dismissed.**

8. In the result, appeal of assessee is dismissed.

Order pronounced in the open court on 19.01.2023

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 19.01.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI