

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI S RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 3162/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2020-21)

<b>Hindustan Facilities P.Ltd Mumbai.</b> Unit No.18, Desh Udhog Co-Op Soc, Caves Road, Near Heatech India, Estate Jogeshwari(E). Mumbai-400060	<b>बनाम/ Vs.</b>	<b>DCIT Circle-2(1)(1) Mumbai,</b> Ayakar Bhavan, Mumbai Maharashtra- 400020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCH2393A		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	None
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Minal Kamble- Sr.DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	30.01.2023
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	31.01.2023

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 17.11.2022, passed by National Faceless Appeal Centre (NFAC), Delhi for AY 2020-2, in relation to the

adjustment made u/s 143(1). In the grounds of appeal, the Assessee had challenging the disallowance 36(1)(va) amounting to Rs.21,29,025/- pertaining to the payment of employee contribution to the Provident Fund act 1952 for the month of April 2019.

2. The relevant grounds are as under:

*1. Learned NATIONAL FACELESS APPEAL CENTRE (NFAC) erred in law and facts in not granting proper opportunity for making the written submission before him thus depriving the appellant of the principle of natural justice. The learned NFAC vide notice dated 2-Nov-2022 granted a time for making the submission till 17th Nov 2022. However, the NFAC passed the ex parte order on 17th Nov 2022 (time 12.56 PM) i.e. before the expiry of the granted date.*

*2. The CPC Bangalore (i.e. the learned AO) erred in law and on facts and the learned 'NFAC' erred in law and in facts in sustaining, disallowance u/s 36(1)(va) of Income Tax Act 1961, amounting to Rs. 21,29,025 pertaining to the payment of employee contribution to the Provident Fund Act 1952 for the Month of April 2019. In arriving at the above conclusion the lower authorities AO failed to appreciate that*

*-the due date mentioned in the Tax Audit report (i.e. 15th April 2019) for the payment pertaining to the month of April 2019 is erroneous, the correct due date is 15th May 2019. This anomaly of*

*erroneous disclosure in the Tax Audit report resulted in an incorrect disallowance.*

*-Actual payment is made on 15th May 2019, which is on or before the due date for the month of April 2019, and hence no disallowance u/s 36(1)(va) is called for.*

3. The briefs facts are that, Appellant had filed its original return of income on 15-02-2021 by declaring total Income of Rs. 2,56,960/-. The return was processed by CPC vide intimation dated 24/12/2021 issued u/s 143(1) of the Act received by appellant on the same day. On perusal of the said intimation, it was observed that CPC has disallowed an amount of Rs. 25,26,246/- for the variances as mentioned in the table below-

Sr No.	Particulars	Amount mentioned in ITR	Amount mentioned in 3CD	Disallowance
1	Disallowance with respect to provident fund and any fund set up under the provisions of ESI, Act, 1948. (Sec 36(1)(va)	-	25,26,246	25,26,246
	Total		25,26,246	25,26,246

4. The Ld. CIT(A), has noted that there was delay in the payment of employees contribution of PF and contribution for ESI for various months, but same was deposited before the due

date filing of return of income u/s 139(1). The CPC has made a adjustment in the intimation passed u/s 143(1) by making an addition of Rs. 25,26,246/-.

5. The Ld.CIT(A), has relied upon the decision of Hon'ble Supreme Court in the case of "**Checkmate Services Private Limited vs. CIT**" 2022, 448 ITR 518, order dated 12.10.2022 and has confirmed the addition.

6. On the perusal of the grounds of appeal, it is seen that Assessee has stated that the payment of employee contribution to the provident fund for the month of April 2019, was made before the due date prescribed under respective Act which was 15<sup>th</sup> May 2019 and therefore, no disallowance u/s. 36(1)(va) can be made. Since, this is a factual issue therefore, matter is limited back to file Assessing Officer to examine whether the payment of employee contribution to the provident fund of Rs.21,29,025/- has been made on the correct due date of 15<sup>th</sup> May 2019; and if the same has been paid on or before this date, then no disallowance should be made.

7. However, in so far as disallowance of ESI is concerned, the same is covered by the decision of Hon'ble Supreme Court in the case of "**Checkmate Services Private Limited vs. CIT**" (Supra), and accordingly, order of the Ld.CIT(A), on this point it is conformed.

8. In the result, appeal of the Assessee is **partly allowed for statistical purposes.**

*Orders pronounced in the open court on 31<sup>st</sup> Jan, 2023.*

Sd/-  
(S Rifaur Rahman)  
Accountant Member

Sd/-  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 31.01.2023

Mrs.Urmila

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**