

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA Nos.18 & 19/Bang/2023
Assessment Years: 2018-19 & 2019-20

Gangahuchaiah Suresh Gowda No.82, 1 st Main Road, 1 st Cross Road, K.G. Nagara T. Dasarahalli Bengaluru 560 057 Karnataka PAN NO : AKJPS5139D	Vs.	ACIT CPC Bangalore/ ITO Ward 6(3)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajagopal S. Joshi, A.R.
Respondent by	:	Dr. Sankar Ganesh K., D.R.

Date of Hearing	:	23.02.2023
Date of Pronouncement	:	23.02.2023

O R D E R

PER BENCH:

These two appeals by assessee are directed against different orders of NFAC, Delhi having common date 15.11.2022 for the assessment years 2018-19 & 2019-20. The issues in these appeals are common i.e. with regard to disallowance of remittance of PF&ESI contribution to employees.

2. The contention of the ld. A.R. is that employer's contribution of ESI & PF is also disallowed though it was paid within due date of filing return of income u/s 139(1) of the Income-tax Act,1961 ['the Act' for short], as such, provisions of section 43B of the Act cannot be invoked and only with respect of employees' contribution, it has not paid within the due date prescribed in respective Act which is to be disallowed in view of the judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT in Civil Appeal No.2833/2016 dated 12.10.2022 and this judgement cannot be applied in respect of employer's contribution of ESI & PF which is paid within the due date of filing return u/s 139(1) of the Act.

3. The ld. D.R. submitted that the judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. cited (supra) is applicable in respect of employees' contribution of ESI & PF paid beyond the date prescribed in respective Act and same was applied by lower authorities.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, lower authorities disallowed employees' contribution of PF & ESI which is paid beyond the date prescribed in respective Act by placing reliance on the judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. cited (supra), wherein held that the disallowance u/s 36(1)(va) r.w.s. 43B of the Act is to be made in respect of employees' ESI & PF contributions made beyond the date prescribed in respective Act. This judgement has also made it clear that in respect of ESI & PF contribution relating to the employer share paid before the due date prescribed u/s 139 of the Act which cannot be disallowed.

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4.1 Thus, the Id. A.R. submitted that the deduction in respect of ESI & PF relating to the contribution of employer share made on or before the due date of filing return of income u/s 139(1) of the Act was also disallowed by AO. On going through the orders of the lower authorities, it was noticed that this issue was not subject matter of litigation before the lower authorities or in the grounds of appeal filed before us. However, in the interest of justice, we observe that the assessee is at liberty to take appropriate remedial measures on this count before the AO, if it is so advised.

5. In the result, appeals of the assessee are dismissed.

Order pronounced in the open court on 23rd Feb, 2023

Sd/-
(George George K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 23rd Feb, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.