

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

**Before Shri George George K., Judicial Member  
and  
Ms. Padmavathy S., Accountant Member**

<b>ITA No. 877/Coch/2022</b> (Assessment Year: 2019-20)		
M/s. Brmsco Garments Pvt. Ltd. V/103A Onakkur, Pampakuda Anchalpetty P.O. Ernakulam 686667 PAN – AADCB2001L	vs	The Income Tax Officer Corporate Ward -1 Kochi
(Appellant)		(Respondent)

Assessee by:	Shri Shijoy K.G., FCA
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing:	01.03.2023
Date of pronouncement:	03.03.2023

**ORDER**

**Per: George George K., J.M.**

This appeal at the instance of the assessee is directed against order of the CIT(A)/NFAC, Delhi dated 30.06.2022 passed under Section 250 of the Income Tax Act, 1961 (the Act). The relevant assessment year is 2019-20.

2. The assessee has raised four grounds of appeal. All the grounds relate to the solitary issue, whether the assessee is entitled to deduction of Rs.11,93,718/- being employees' contribution paid beyond the 'due date' as prescribed in the respective Acts, PF, ESI, etc.

3. The brief facts of the case are as under: -

The assessee, a company, filed its return of income for AY 2019-20 on 04.09.2019 declaring an income of Rs,11,76,650/-. Intimation under Section 143(1) of the Act (dated 28.02.2020) was issued by the CPC/AO wherein disallowance/addition was made of Rs.11,93,718/- being employees' contribution to ESI and PF. The reasoning for disallowance was that the same was paid by the assessee beyond the due date prescribed in the respective Acts.

4. Aggrieved by the said disallowance the assessee filed appeal before the first appellate authority. It was contended before the first appellate authority that the assessee had paid employees' contribution before the due date for filing of return under Section 139(1) of the Act. Therefore, it is entitled to the deduction claimed. The CIT(A), however, rejected the contention of the assessee. The CIT(A), following the judgement of the Hon'ble Jurisdictional High Court in the case of CIT vs. Merchem Ltd. reported in 378 ITR 443 decided the issue against the assessee.

5. Aggrieved, assessee filed the present appeal before the Tribunal. The learned A.R. relied on the grounds raised.

6. The learned D.R., on the other hand, submitted that the issue is covered in favour of the Revenue by the judgement of the Hon'ble Apex Court in the case of Checkmate Services (P) Ltd. vs. CIT (2022) 143 taxmann.com 178(SC).

7. We have heard the rival contentions and perused the material on record. The issue raised in this appeal is no longer res-integra. The Hon'ble Apex Court in the case of Checkmate Services (P) Ltd. (supra) had held that the employees' contribution paid by the assessee beyond the due date prescribed under the PF/ESI Act cannot be allowed a deduction. In the light of the judgement of the Hon'ble Apex Court we reject the contention of the assessee.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 3<sup>rd</sup> March, 2023.

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**Judicial Member**

Cochin, Dated: 3<sup>rd</sup> March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
6. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Cochin*

n.p.