

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'SMC' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.181/Del./2023  
(ASSESSMENT YEAR : 2018-19)**

**ITA No.182/Del./2023  
(ASSESSMENT YEAR : 2019-20)**

Manipal Singh Walia,  
(Legal Heir of Kirpal Singh),  
B-1A, 88A, Janakpuri,  
New Delhi – 110 058.  
**(PAN : AAHPW6887G)**

vs. ITO, Ward 52 (4),  
Delhi.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sameer Kapoor, CA  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 09.03.2023  
Date of Order : 1403.2023

**ORDER**

These appeals by the assessee are directed against the respective orders of National Faceless Appeal Centre (NFAC) pertaining to the Assessment Years 2018-19 & 2019-20.

2. Since the issues are common & connect and the appeals were heard together, the same are being disposed off by this common order.

3. For the sake of reference, I am referring to ITA No.181/Del/2023 for AY 2018-19. The grounds of appeal taken by the assessee read as under :-

“Whether on law or facts of the case, Id. CIT (A) was justified in upholding the addition of Rs.29,84,060/- made by the Ld. CPC on account of employees contribution u/s 36(1)(va).”

3. In this case, the issue relates to disallowance made by the CPC on account of employees' contributions of PF and ESI u/s 36(1)(va) of the Income-tax Act, 1961 (for short 'the Act').

4. In this regard, Id. Counsel of the assessee submitted that before the Id. CIT (A), assessee had submitted submissions which have not been considered and Id. CIT (A) has mentioned that no response was given. For this, Id. Counsel of the assessee brought before us evidence of having uploaded the reply and remarks which the Id. CIT (A) has failed to acknowledge.

5. Upon careful consideration, I note that there is no doubt that the issue of employees' contribution towards PF & ESI is covered against the assessee by the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (2022) 143 taxmann.com 178 wherein it has been held that if employee contribution of provident fund and ESI paid beyond due date as specified under the relevant Act then the same has to be added back in the income of the assessee. However, it is also correct and duly acknowledged by the Id. DR of the Revenue that assessee has given submissions before the Id. CIT (A) who ignored the same. Hence, interest of justice demands that the issue may be remitted to Id. CIT (A). Id. CIT (A) is directed to decide afresh after considering the submissions of the assessee as per law.

6. Our above order applies *mutatis mutandis* to both the appeals for AYs 2018-19 & 2019-20.

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

**Order pronounced in the open court on this 14<sup>th</sup> day of March, 2023.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 14<sup>th</sup> day of March, 2023/TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.