

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.1 & 2/Bang/2023
Assessment Year: 2017-18 & 2018-19

Sri Chandrakant Shamappa Kontha 1, Parwati Nilaya Raghavendra Apartment Bhavani Nagar Hubli 580 023 Hubli, Dharwad District Karnataka  <b>PAN NO : AHYPK0624K</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax CPC Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Ravishankar S.V., A.R.
<b>Respondent by</b>	:	Shri Gudimella VP Pavan Kumar, D.R.

<b>Date of Hearing</b>	:	08.03.2023
<b>Date of Pronouncement</b>	:	08.03.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These appeals by the assessee are directed against order of NFAC dated 11.11.2022 for the AYs 2017-18 & 2018-19.

2. These appeals are filed by the assessee challenging the confirmation of disallowance made by the AO in respect of employees' contribution for the Provident Fund and ESI, which was made after due date of respective Act and paid within due date of filing return

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u/s 139(1) of the Income-tax Act, 1961 [‘the Act’ for short]. In this case, the disallowance was made in assessment year 2017-18 in rectification proceedings u/s 154 of the Act and in assessment year 2018-19 while processing the return by CPC u/s 143(1) of the Act. The assessee has also raised additional grounds along with a petition in assessment year 2017-18 stating as follows:-

1. *“The ld. CIT(A) failed to appreciate that the addition made by the ld. AO by invoking the provisions of section 143(1) of the Act is without jurisdiction and not applicable to the facts and circumstances of the case of the appellant.*
2. *The appellant craves leave of this Hon’ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
3. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

3. We have heard the rival submissions and perused the materials available on record. The ld. A.R. submitted that the assessee has filed appeal before this Tribunal on 2.1.2023. Later, as per the decision of Jaipur Bench of Tribunal in the case of Paris Elysees India Pvt. Ltd. Vs. DCIT in ITA No.357/JPR/2022 dated 20.2.2023, it was held that *“adjustment on account of additions of employees’ contribution to ESI/PF deposited by assessee after the specified date prescribed under laws governing the ESI/PF was beyond the scope of section 143(1) of the Act. Thus, adjustment made u/s 36(1)(va) of the Act is outside the purview of section 143(1) of the Act”*. Hence, the ld. A.R. requested for admission of additional grounds.

3.1. In our opinion, in view of the above decision of the coordinate bench of Jaipur, there is a good and sufficient reason in filing

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additional grounds in ITA No.1/Bang/2023 only. Accordingly, we admit the additional grounds.

3.2. The issue in these appeals is limited to disallowance of ESI/PF contribution to employees' share beyond specified date mentioned in respective Act and contributed within the due date of filing return of income u/s 139(1) of the Act. This issue came for consideration before Hon'ble Supreme Court in the case of CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022 decided the issue on allowability/treatment of 'delayed' Employee PF Contribution payment in hands of assessee under provisions of Income Tax Act and held that Section 36(1)(va) and Section 43B(b) operate on totally different equilibriums and have different parameters for due dates, i.e., employee's contribution is linked to payment before the due dates specified in the respective Acts and employer's contribution is linked to the payment before the prescribed due date for filing of return u/s. 139(1) of Income Tax Act, 1961. The result of any failure to pay within the prescribed dates also leads to different results. In the case of employee's contribution, any failure to pay within the prescribed due date under the respective PF Act or Scheme will result in negating employer's claim for deduction permanently forever u/s.36(1)(va). On the other hand, delay in payment of employer's contribution is visited with deferment of deduction on payment basis u/s.43B and is therefore not lost totally. Therefore, as per the above decision, the disallowance made by the Revenue authorities, were fully justified.

3.3. In view of this, we dismiss all the main grounds raised by the assessee.

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3.4. Coming to the additional grounds raised by the assessee, since the issue is already disposed of by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. cited (supra), it has to be followed by the department as well as by this Tribunal. We find no merit in the argument of the assessee's counsel that disallowance of employees' contribution to ESI/PF deposited by the assessee after the specified date prescribed under the respective Act was beyond the scope of adjustment u/s 143(1) of the Act. In our opinion, the reliance placed by assessee in the case of Paris Elysees India Pvt. Ltd. Vs. DCIT cited (supra) is of no assistance to the assessee. In that case, the Tribunal has not discussed the ratio laid down by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. cited (supra) in the findings recorded by the Tribunal and it was totally overlooked in their observations. Being so, there is no ratio decidendi laid down by above order of the Tribunal. Hence, we find no merit in the argument of assessee's counsel. Accordingly, additional grounds raised in ITA No.1/Bang/2023 are dismissed.

4. In the result, both the appeals of the assessee are dismissed.  
Order pronounced in the open court on 8<sup>th</sup> Mar, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 8<sup>th</sup> Mar, 2023.  
VG/SPS

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Copy to:

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

By order

**Asst. Registrar,  
ITAT, Bangalore.**