

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 1709/Del/2022
Assessment Year: 2018-19

Sadakat Ali, Prop. S P Enterprises, Devru Road, Shiv Solony, Gali No.11, Sonipat (Haryana).	Vs.	ITO, Ward-4, Sonipat.
PAN :AGRPA7294D		
(Appellant)		(Respondent)

Appellant by	N o n e
Respondent by	Shri Om Prakash, Sr. DR

Date of hearing	20.03.2023
Date of pronouncement	31.03.2023

ORDER

This is an appeal by the assessee against order dated 24.05.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment year 2018-19.

2. When the appeal was called out for hearing, none appeared on behalf of the assessee. However, assessee has sent an application through e-mail seeking adjournment.

3. On perusal of record, it is observed, on previous five occasions, though, the appeal was fixed for hearing, on none of the occasions, the assessee did appear. In fact, hearing notices issued through postal authorities have returned back unserved time and again. Therefore, considering the fact that sufficient opportunity has already been granted to the assessee, which he has failed to avail and also the fact that the issue in dispute is squarely covered by the decision of the Hon'ble Supreme Court, I am inclined to decide the appeal ex parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.

4. As could be seen from the grounds raised, the dispute in the present appeal is confined to disallowance of deduction claimed of Rs.1,51,020, being employees contribution to Provide Fund (PF) and Employees State Insurance (ESI), paid beyond the due date prescribed under Section 36(1)(va) of the Act.

5. I have considered submissions of learned Departmental Representative and perused the material available on record.

6. While processing the return of income filed by the assessee for the impugned assessment year, the Centralized Processing Centre (CPC) noticed that employees contribution to PF/ESI was paid by the assessee beyond the due date prescribed under Section 36(1)(va) of the Act. Therefore, in the intimation issued under Section 143(1) of the Act, the CPC disallowed the deduction claimed and added back to the income of the assessee.

7. Against the intimation issued, the assessee filed a rectification application under Section 154 of the Act, which was also dismissed. Against the order passed under Section 154 of the Act, the assessee preferred an appeal before the first appellate authority, which was disposed of by the impugned order, upholding the adjustment made by the CPC. It is the case of the assessee before the departmental authorities as well as before me that employees contribution to PF/ESI, though, was not paid within the due date prescribed under the relevant Status governing payment of PF and ESI, as required under Section 36(1)(va) of the Act, however, deduction claimed has to be

allowed as the payments were made before the due date of filing of return under Section 139(1) of the Act.

8. In my view, the aforesaid claim of the assessee cannot be accepted in view of the decision of the Hon'ble Supreme Court in case of *Checkmate Services Pvt. Ltd. Vs. PCIT* (2022) 143 Taxman.com 178 (SC), wherein, the Hon'ble Supreme Court has held that employees contribution to PF/ESI, if not paid within the due date prescribed under the statutes governing such payment in terms of section 36(1)(va) of the Act read with section 2(24)(x), such amount has to be treated as income of the assessee, hence, not allowable as deduction under Section 43B of the Act, even if, such payments are made before the due date of return of income under Section 139(1) of the Act. While laying down such ratio, Hon'ble Supreme Court has carved out difference between employees' contribution and employer's contribution to PF and ESI. Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court in the above referred case, I hold that deduction claimed by the assessee is not allowable. Accordingly, I uphold the decision of learned Commissioner (Appeals) on the issue. Grounds are dismissed.

9. In the result, the appeal is dismissed.

Order pronounced in the open court on 31st March, 2023.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 31st March, 2023.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi