

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No. 371/Del/2023  
Assessment Year: 2020-21

Arvind, House No. 116,Gali No.3, Balaji Nagar, Village Garhi Harsaru, Gurugram, Haryana-122505	<b>Vs.</b>	ITO, Ward-1(3), Gurugram
<b>PAN :AVFPA0965N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	N o n e
Respondent by	Shri D.K. Srivastava, Sr. DR

Date of hearing	28.03.2023
Date of pronouncement	31.03.2023

**ORDER**

This is an appeal by the assessee against order dated 13.12.2022 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2020-21.

2. When the appeal was called out for hearing, none appeared on behalf of the assessee.

3. It is observed, the notice of hearing issued to the assessee through speed post has returned back un-served as the assessee was not found in the given address.

4. Considering the nature of dispute and the fact that the issue is covered by a decision of Hon'ble Supreme Court, I proceed to dispose of the appeal ex parte qua the assessee after hearing learned Departmental Representative and the material available on record.

5. The dispute in the present appeal is confined to disallowance of deduction claimed in respect of delayed payment of employees contribution to Employees State Insurance (ESI) and Provident Fund (PF) amounting to Rs.23,32,110.

6. While processing the return filed by the assessee, the Centralized Processing Centre (CPC) noticed that employees contribution to PF and ESI was not paid within the due date prescribed under Section 36(1)(va) of the Act. Accordingly, the deduction claimed by the assessee was disallowed.

7. Contesting the disallowance, the assessee preferred an appeal before the first appellate authority. However, the disallowance was sustained.

8. I have heard learned Departmental Representative and perused the material on record.

9. Undoubtedly, the assessee has not paid the employees contribution to PF and ESI within the due date prescribed under the statute governing the payment of PF and ESI. Though, there was delay in payment of employees contribution to PF and ESI, however, the assessee still claimed the deduction on the plea that the payment was made within the due date of filing of return of income under Section 139(1) of the Act.

10. In my view, the aforesaid claim of the assessee is not acceptable in view of the ratio laid down by the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 Taxmann. 178 (SC).

11. In the aforesaid decision, the Hon'ble Supreme Court has held that unless the assessee makes payment of employees contribution towards PF and ESI within the due date prescribed under the relevant statutes, it has to be treated as assessee's income under Section 2(24)(x) of the Act and no deduction can be claimed under Section 43B of the Act in respect of such payment. Thus, respectfully

following the ratio laid down by the Hon'ble Supreme Court, as discussed above, I uphold the disallowance. Ground raised is dismissed.

12. In the result, the appeal is dismissed.

*Order pronounced in the open court on 31<sup>st</sup> March, 2023.*

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

Dated: 31<sup>st</sup> March, 2023.

**Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi