

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 194/Srt/2023 (Assessment Year 2013-14)
(Virtual hearing)

M/s Manilal Stores, 5, Kalpana Building, Galiara Sheri, Bhagal, Surat. PAN No. AAEFM 0652 L	Vs.	I.T.O., Ward-2(2)(3), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Tinish Mody, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of appeal	22/03/2023
Date of hearing	18/04/2023
Date of pronouncement	18/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 27/02/2023 for the Assessment Year (AY) 2013-14. The assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well as law on the subject, the reopening of the appellant’s case u/s 148 of the Act is bad in law and without jurisdiction.*
- 2. On the facts and in the circumstances of the case as well as law on the subject, the Id. CIT(A)/NFAC, Delhi erred in confirming the addition made by the ITO, Ward 2(2)(3), Surat to the tune of Rs. 1,76,894/- u/s 2(24)(x) r.w.s. 36(1)(va) of the I.T. Act without appreciation the facts of the case.*
- 3. On the facts and in the circumstances of the case as well as law on the subject, the Id. CIT(A)/NFAC, Delhi ought to have allowed Employer’s Contribution towards PF and ESI of Rs. 1,09,056/- being paid within the same financial year as per provision of law.*

2. Rival submission of both the parties have heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee submits that a very short issue is involved in the present appeal. The lower authorities while disallowing the employees' contribution towards ESI and PF also disallowed contribution of employer's towards ESI and PF. The assessee before Id. CIT(A) specifically given bifurcation of employer's contribution of ESI as well as employer's contribution of PF as recorded on page No. 4 of the order of Id. CIT(A). The Id. AR of the assessee submits that the employees' contribution of ESI and PF can only be disallowed in view of decision of Hon'ble Supreme Court in the case of Check Mate Services Pvt. Ltd. Vs CIT in Civil Appeal No. 2833/2016 dated 12/10/2022. The Id. AR of the assessee submits that necessary direction may be given to the Assessing Officer to verify the fact and to allow relief to the assessee qua the employer's contribution of ESI and PF which was deposited beyond due date and allowable for deduction.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of Id. CIT(A). The Id. Sr. DR for the revenue submits that the issue is squarely covered by the decision of Hon'ble Supreme Court in Check Mate Services Pvt. Ltd. Vs CIT (Supra) and in case any disallowance includes the employer's contribution may be verified by the Assessing Officer and suitable relief

can be allowed by the Assessing Officer only on verification of facts and in accordance with law.

4. I have considered the submissions of both the parties and find that during the assessment proceedings, the Assessing Officer made disallowance of employees' contribution of Rs. 1,76,894/- with respect of provident fund and ESI, deposited by assessee belatedly i.e. after due date by following the decision of Hon'ble Jurisdictional High Court in CIT Vs Gujarat State Transport Corporation dated 26/12/2013. Before the Id. CIT(A), the assessee given bifurcation of employees' contribution as well as employer's contribution of ESI and PF out of which Rs. 56,750/- relates to employer's contribution to ESI and Rs. 52,306/- of employer's contribution of EPF and remaining of Rs. 21,722/- and Rs. 46,116/- on account of employees' contribution with regard to ESI and PF respectively. Therefore, the part of issue i.e. which relates to employer's contribution of ESI and PF is restored back to the file of Assessing Officer to verify the fact and allow appropriate relief to the assessee by following the decision of Hon'ble Apex Court in Check Mate Services Pvt. Ltd. Vs CIT (Supra), in accordance with law. Needless to direct that before passing the order, the Assessing Officer shall grant opportunity to the assessee for furnishing necessary evidence/challan of employer's contribution of ESI and PF. With this direction, the appeal of assessee is partly allowed.

5. In the result, this appeal of the assessee is partly allowed.

Order announced in open court on 18th April 2023 at the time of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 18 /04/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat