

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
ITA No.2576/DEL/2022
[Assessment Year: 2017-18]

ITO, Ward-5, Aayakar Bhawan, Delhi Road, Opp. Mansarover Park, Rohtak-124001(Hararyana)	Vs	Shri Rajbir deceased through Shri Rajesh Legal Heir, H. No.778/1, Saini Anandpura, Rohtak (Haryana)-124001
		PAN-AEVPK9918C
Revenue		Assessee

Revenue by	Sh. Shankar Gupta, Sr. DR
Assessee by	None

Date of Hearing	26.04.2023
Date of Pronouncement	27.04.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of the Ld. National Faceless Appeal Centre (NFAC), Delhi, dated 25.08.2022 pertaining to Assessment Year 2017-18.

2. The grounds of appeal reads as under:-

“1. Whether on the facts & in the circumstances of the case and in law, the ld. CIT(A) was correct in deleting addition of Rs.1,71,70,670/- on account of late deposit of employee’s contribution to PF/ESI beyond the prescribed time limit provided in the respective Acts in view of the judgment of Hon’ble Supreme Court in Civil Appeal No.2833 of 2016 in the case of Checkmate Services P. Ltd. vs Commissioner of Income Tax-1 dated 12.10.2022?”

2. *Whether on the facts & in the circumstances of the case and in law, the ld. CIT(A) was correct in holding that employees contribution to PF are governed by the provisions of Section 43B and not by Section 36(1)(va) r.w.s. 2(24(x) of the Income Tax Act, 1961?"*

3. The short issue in this case is that as to whether the Ld. CIT(A) erred in deleting the addition of Rs.1,71,70,670/- made by the AO u/s 143(1) of the Act on account of PF & ESI contribution paid by the employees paid beyond the time specified in the respective statute but before the due date of filing of return of income u/s 139(1) of the Act.

4. We find that the issue on merits is covered against the assessee by the decision of the Hon'ble Apex 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 the due date as prescribed under the relevant Act then the same has to be added back in the income of the assessee. Respectfully following the precedent, we set-aside the order of the Ld. CIT(A) and confirmed the order of the AO.

5. In the result, the appeal of the Revenue stands allowed.

Order pronounced in the open court on 27th April, 2023.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 27.04.2023

Shekhar,

Copy forwarded to:

1. Appellant

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

Asst. Registrar,
ITAT, New Delhi