

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'B' BENCHES :: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER &  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.259/PUN/2023  
(A.Y. 2018-19)**

Sahebrao Damu Shewale, 11, Abhijit Pak B, Kamal Nagar, Kamatwade Cidco, Nashik.  PAN: ASPPS 6283 E	Vs	The DCIT, CPC.
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	01/05/2023
Date of pronouncement	:	01/05/2023

**ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee against the order of Commissioner of Income Tax (Appeals) [NFAC], Delhi, dated 17.01.2023 for A.Y.2018-19, emanating from assessment order of Asst. Director of Income Tax (CPC), dated 08.01.2020. The assessee has raised the following grounds of appeal:

*"1. The Id.CIT(A) NFAC, Delhi erred in law and on facts in confirming the addition of Rs.67,94,757/- made by the Id.DCIT, CPC, Bengaluru on account of employees contribution of PF and ESI u/s. 36(10(va)).*

*2. The appellant contends that Id.CIT(A) erred in law and in facts in confirming addition amounting to*

*Rs.67,94,757/- made u/s 143(1) of ITA, 1961 on the basis of disclosure in tax audit report and thereby erred in not appreciating that such disallowance is beyond the scope of provisions of s.143(1) of ITA, 1961.*

*3. Appellant craves leave to add/alter/delete/modify, all/any of the above grounds of appeal."*

2. We have heard the Id.DR and perused the record.

2.1 The only issue involved in this appeal is with regard to disallowance of Rs. 67,94,757/- u/s. 36(1)(va) on account of delayed payment of employees' contribution towards PF & ESI.

3. The issue of delayed payment of employees' contribution of Provident Fund & ESIC has been decided by the Hon'ble Supreme Court in the case of **Checkmate Services (P.) Ltd. Vs. CIT** vide order dated 12/10/2022 as under:

*Quote, "That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date." Unquote.*

3.1 This Tribunal of ITAT, Pune Bench in the case of **Trimurti Cement Products Pvt. Ltd. v. ITO** in ITA No. 182/PUN/2023, dated 20/04/2023 has also upheld the disallowance made by the AO on account of delayed payment of employees' contribution to PF & ESI.

4. Respectfully following the judgment of the Hon'ble Supreme Court in the above referred case, we uphold the addition of Rs.67,94,757/- and dismiss the appeal of the assessee.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 01<sup>st</sup> May, 2023.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

Dated : 01<sup>st</sup> May, 2023

vr/-

**Copy to :**

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench, Pune.
6. Guard File.

By Order

Senior Private Secretary  
ITAT, Pune.