

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.106/Bang/2023
Assessment Year: 2020-21

Krishnaswamy Venkata Raman T-1, Prathamesh Apartments 17 th Cross, 6 th Main, Malleshwaram Bangalore 560 055 PAN NO : AAXPR9361G	Vs.	ADIT CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E. Balasubramnayan, A.R. & Ms. Priya B., A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	27.04.2023
Date of Pronouncement	:	01.05.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 27.12.2022 for the assessment year 2020-21. The assessee has raised the grounds in this appeal as follows:-

- 1. That the impugned order is opposed to facts and law insofar as it is prejudicial to the interests of the appellant.*
- 2. That ld. CIT(A) erred in confirming the order of the ld. AO in which he added back the contribution to Employees Provident Fund and Employees State Insurance Corporation under section 36(1)(va) without taking into consideration the auditor's certificate submitted by the appellant wherein it was clarified that partial deposits had been made within the due dates with*

the relevant authorities under the respective laws and in doing so erred in not confining the disallowance to the extent of the deposits made post the due date under the respective laws.- Tax effect Rs.18,13,295/- appx. Plus applicable interest.


3. *That the ld. CIT(A) erred in confirming the order of the ld. AO wherein he added back the amounts reported under section 43B by the Assessee under the row 26(1)(B)(a) without appreciating the fact that these amounts represent liabilities which were incurred by the assessee had been deposited within the due dates under the respective laws. – Tax effect Rs.32,85,475/- appx. Plus applicable interest*
4. *Without prejudice to the above, the ld. AO failed to appreciate that the amount received from the employees, being income u/s 2(24)(x) ought to have been allowed as expenditure u/s 37 as the same were expended for business purposes. – Tax effect Rs.8,50,218/-*

2. Facts of the case are that the assessee is an individual engaged in the profession of Management Consultancy, filed the return of income u/s 139(1) of the Income-tax Act, 1961 [‘the Act’ for short] on 15.02.2021. The assessee in such return has declared the total income of Rs.14,02,840/- after considering all deductions under chapter VIA for the A.Y. 2020-21. Assessment has been completed u/s 143(1) of the Act and total income of the assessee was assessed at Rs. 1,75,50,230/- after making an adjustment of Rs.1,61,47,389/- due to the fact that the contribution of EPF/ESI of employees’ contribution was deposited beyond the due date of respective Acts. The assessee claimed that the same has been deposited in Government account before filing of the return of income u/s 139(1) of the Act. The present appeal emanates from this order.

2.1 The NFAC relied on the decision of Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 in Civil Appeal No.2833 of 2016 dated 12.10.2022, wherein held that if the assessee has failed to pay the employees share of ESI & PF contribution within the prescribed dates as stipulated in the respective Act will result in

negating employees claim for deduction permanently forever u/s 36(1)(vi)(a) of the Act. Against this assessee is in appeal before us.

3. The Id. A.R. submitted that there are certain payments made within the due date specified in the respective ESI & PF Act. However, the tax auditor wrongly reported in his audit report filed in 3CD for assessment year 2020-21 on 15.2.2021 and accordingly, he corrected the column 20 in 3CD as below:




NSVM & ASSOCIATES
CHARTERED ACCOUNTANTS

TO WHOMSOEVER IT MAY CONCERN

This is with reference to the Audit Report filed in 3CD for Assessment year 2020-21 in the case of Mr. K Venkataraman, (Prop: Business Solutions) filed on 15.02.2021.

"The Clause No.20 in 3CD is mentioned as follows: -

Due date P.F. Contributions	Date of Payment	Amount of Remittance	Amount collected
15-May-19	19-May-19	10,30,430	10,30,430
15-Jun-19	03-Sep-19	11,43,203	11,41,487
15-Jul-19	03-Sep-19	11,72,270	11,22,139
15-Aug-19	15-Aug-19	13,59,077	14,00,237
15-Sep-19	27-Sep-19	14,19,047	13,97,500
15-Oct-19	15-Aug-19	14,00,618	14,22,165
15-Nov-19	15-Nov-19	14,37,421	14,37,421
15-Dec-19	14-Dec-19	15,40,666	15,40,666
15-Jan-20	16-Jan-20	15,41,045	15,41,045
15-Feb-20	15-Feb-20	16,13,600	16,13,600
15-Mar-20	15-Mar-20	15,43,443	15,43,443
15-Apr-20	13-Apr-20	16,89,713	16,89,713



CERTIFIED TRUE COPY
Bangalore
560 003
Chartered Accountants

No. 63/1, 1st Floor, Above Canara Bank, Railway Parallel Road, Kumara Park West, Bangalore - 560 020, India, www.nsvm.in
[T + 91 80 4150 6054/5/6/1946057/58 | E:people@nsvm.in]

On verification, in Form 3CD the last payment dates have been erroneously captured and we are reporting the clause as follows correcting the errors: -

Due date P.F. Contributions	Date of Payment	Amount of Remittance	Amount collected
15-May-19	15-May-19	5,10,467	10,30,430
	19-May-19	5,19,963	
15-Jun-19	15-Jun-19	9,20,516	11,41,487
	20-Jun-19	1,78,779	
	30-Jun-19	42,192	
	03-Sep-19	1,716	
15-Jul-19	15-Jul-19	11,22,139	11,22,139
	26-Jul-19	41,160	
	03-Sep-19	8,971	
15-Aug-19	15-Aug-19	13,59,077	14,00,237
15-Sep-19	14-Sep-19	13,97,500	13,97,500
	27-Sep-19	21,547	
15-Oct-19	15-Oct-19	14,00,618	14,22,165
15-Nov-19	15-Nov-19	14,37,421	14,37,421
15-Dec-19	14-Dec-19	15,40,666	15,40,666
15-Jan-20	14-Jan-20	15,34,299	15,41,045
	16-Jan-20	6,746	
15-Feb-20	15-Feb-20	16,13,600	16,13,600
15-Mar-20	15-Mar-20	15,43,443	15,43,443
15-Apr-20	15-Apr-20	16,89,713	16,89,713

For NSVM & Associates
Chartered Accountants

Firm Registration no: 0100725

V. S. Ranganathan



V. S. Ranganathan
Partner

Membership number: 201872



3.1 The ld. A.R. for the assessee prayed that the issue may be remitted to the file of AO for re-examination and to consider the issue afresh.

4. The ld. D.R. has not seriously objected the argument of ld. A.R.

5. We have heard the rival submissions and perused the materials available on record. The CPC while processing the return u/s 143(1) of the Act had gone through the tax audit report with 3CD report accompanied with the return of income and as per this document, the CPC disallowed the impugned amount of Rs.1,61,47,389/- due to the fact that contribution of EPF/ESI of employees' contribution was deposited beyond the due dates as prescribed in respective Acts. Now the assessee has filed a certificate from his CA who has certified the tax audit report and 3CD report, wherein mentioned that certain payments out of the above impugned amount were made within the due date as prescribed in respective PF & ESI Act and he also submitted that this is also supported by the payment of challan for making the payment to Government account. In our opinion, this payment is required to be verified by AO by verifying the tax audit report along with respective payment challans. Accordingly, in the interest of justice, we remit the entire issue in dispute to the file of AO for reconsideration in the light of judgement in the case of Checkmate Services Pvt. Ltd. cited (supra) along with payment of challans, 3 CD report and tax audit report filed before us. In view of the above, the entire issue in dispute is remitted to the file of AO for fresh consideration.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 1st May, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 1st May, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.