

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1804/Del/2020
(Assessment Year : 2019-20)

ATC Precision Components Pvt. Ltd., B-1/5,Janak Puri Delhi-110 058 PAN No. AAFCA 2867 H (APPELLANT)	Vs.	DCIT CPC Bangalore (RESPONDENT)
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Assessee by	-None-
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	09.05.2023
Date of Pronouncement:	12.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 31.08.2020 of the Commissioner of Income Tax (Appeals)-I, New Delhi relating to Assessment Year 2019-20.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of manufacturing of components for automobile industry. Assessee electronically filed its return of income on 31.10.2019 for A.Y. 2019-20 declaring total income of Rs.2,06,67,150/-. In the intimation issued u/s 143(1) of the Act (document Identification No. CPC/1920/A6/1973700923) dated 28.02.2020 the total income was computed at Rs.2,08,46,560/-. Aggrieved by the intimation issued u/s 143(1) of the Act, assessee carried the matter before CIT(A) who vide order dated 31.08.2020 in E-Appeal No.10002/20-21 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That the learned Commissioner of Income Tax (Appeals)-1, New Delhi has erred both in law and on facts in upholding the addition under section 36(1)(va) of Rs.1,79,407/- on account of delay in deposit of employees contribution under the relevant act without considering the stated judgments where it was held that if the payments of PF and ESIC are made before due date for filing of the return u/s 139 of the Act, no disallowance u/s 36(1)(va) read with section 43B is warranted. It is further submitted if the employee's contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. In so far as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed. That the submissions made during the appellate proceedings have not been properly appreciated by the Authorities below.*
2. *That the learned Commissioner of Income Tax (Appeals)-1, New Delhi has erred both in law and on facts in upholding the addition under section 36(1)(va) of Rs.1,79,407/- although it was submitted that, second proviso to section 43B of the Act which*

specifically made reference to section 36(1)(va) of the Act for due date of deposit. As per the amendment, the proviso was withdrawn and payment of contribution to ESI/EPP was brought within the purview of first proviso to section 43B of the Act. After this amendment, it was sufficient to deposit the contribution from employees by the date for filing return of income in order to claim the deduction under the Act. This amendment was curative in nature, that deletion of the said provisions made it clear that the law was enacted to ensure that the payments towards PF, ESI etc contributions must be made before furnishing the return of income.

3. *That the learned Commissioner of Income Tax (Appeals)-1, New Delhi has further erred both in law and on facts in upholding the addition of under section 36(1)(va) of Rs.1,79,407/- on account of delay in deposit of employees contribution under the relevant act without appreciating the fact the case laws and judgments quoted by learned Commissioner of Income Tax (Appeals) are not applicable to the matter under consideration and hence no reliance can be placed on them.*
4. *That the learned Commissioner of Income Tax (Appeals)-1, New Delhi has further erred both in law and on facts in upholding the addition of under section 36(1)(va) of Rs.1,79,407/- without appreciating the fact that additions made by the Learned Deputy Commissioner of Income Tax, CPC, Bangalore has been made without granting an opportunity prior to framing the impugned order.*

The same is illegal and violation of principle of natural justice and therefore vitiated. At the outset, it is most respectfully submitted that, no valid and proper opportunity was granted to the appellant during the course of assessment proceedings and assessment has been framed in gross violation of the principles of the natural justice.

5. *That it is therefore, prayed that, it be held that assessment made by the learned Income Tax Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed and, further addition so upheld by the learned Commissioner of Income Tax (Appeals) along with interest levied be deleted and appeal of the appellant be allowed.”*

4. On the date of hearing none appeared on behalf of the assessee though the notice of hearing was issued to the assessee. Since the issue raised in the present appeal appears to be a covered issue by the decision of Hon'ble Apex Court, we proceed to dispose of the appeal *ex parte qua* the assessee, after considering the submissions of Learned DR and the material on record.

5. From the appeal filed by the assessee it is seen that though the assessee has raised several grounds but the sole grievance of the assessee is with respect to the addition of Rs.1,79,407/- made u/s 36(1)(va) of the Act. It is the contention of the assessee that though there was delay in depositing the employees contribution to PF and ESI before the due date prescribed but however all the dues have been deposited with the appropriate authorities before the filing of return of income and therefore no disallowance u/s 36(1)(va) of the Act is called for.

6. Before us, Learned DR supported the order of lower authorities and submitted that in view of the decisions of Hon'ble Apex Court in the case of **Checkmate Services Pvt. Ltd. and others vs. CIT & others (2022) 448 ITR 518 (SC)** no interference to the order of lower authorities is called for.

7. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with

respect to the disallowance of delayed deposit of employee's contribution of PF & ESI in the intimation passed u/s 143(1) of the Act. We find that Hon'ble Supreme Court in the case of **Checkmate Services Pvt. Ltd. (supra)** has held that the contribution by the employees to the relevant funds is the employer's income u/s 2(24)(x) of the Act and the deduction for the same can be allowed only if such amount is deposited in the employee's account in the relevant fund before the date stipulated under the respective Acts. Thus the deduction u/s 36(1)(va) of the Act can be allowed only if the employees' share in the relevant funds is deposited by the employer before the due date stipulated in respective Acts.

8. We are of the view that the ratio of the aforesaid decisions of Hon'ble Apex Court is applicable to the present facts. We therefore, following the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (supra) find no reason to interfere with the order of lower authorities and **thus the grounds of assessee are dismissed.**

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

Order pronounced in the open court on 12.05.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 12.05.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI