

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

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

ITA No. 85/Bang/2023
Assessment Year : 2018-19

Shri Govindaiah N, No. 34, Byraveshwara Nilaya, Maheshwari Temple Road, 6 th Cross, Dasarahalli, Bangalore – 560 057. PAN: ACKPG7456Q	Vs.	The Deputy Commissioner of Income Tax, Circle – 6(2)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Shri Sankar Ganesh K. Addl. CIT (DR)

Date of Hearing	:	24-04-2023
Date of Pronouncement	:	26-04-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by the assessee has been filed by assessee against the order dated 16/12/2022 u/s. 250 passed by the National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2018-19 on following grounds of appeal:

“The Grounds mentioned hereinafter are without prejudice to one another.

1. That the appellate order passed by the Commissioner of income-tax (Appeals), National Faceless Appeal Centre (NFAC) (hereinafter referred to as the Learned Commissioner) u/s 250 of the Income-tax Act, 1961 in appeal ITA No. NFAC/2017-18/10147086, DIN: ITBA/NFAC/S/250/2022-23/1048053399(1) dated 16-12-2022 is arbitrary, erroneous, bad in law and liable to be quashed.

2. That the order passed by the learned Commissioner of income-tax is without appreciating the factual position, underlying documentation and is contrary to the provisions of Income-tax Act.

3. That the leaned Commissioner of income-tax has erred in not issuing any notice calling for hearing and passing the order as aforesaid without providing any opportunity of being heard on the subject matter and thereby violated principles of natural justice. Therefore, the order of the learned Commissioner is liable for set aside.

4. That on the facts and circumstances of the case and in law, the learned Commissioner has failed to appreciate that u/s 143(1)(a), the Assessing Officer, Central Processing Centre (hereinafter referred to as the AO CPC) has no jurisdiction to make adjustments to the income u/s 36(1)(va).

5. That on the facts and circumstances of the case and in law, the learned Commissioner has erred in confirming the action of AO CPC Vide DIN CPC/1819/A3/1918836581 dated 13/12/2019 in addback of employee's contribution towards provident fund, ESI and welfare funds amounting to Rs. 79,57,178, Rs. 22,11,207 and Rs. 20,600 respectively despite the fact that these payments were made before filing the return of income u/s 139(1).

6. That the learned Commissioner failed to appreciate facts of the case of the Appellant and position of law u/s 36(1)(va) and blindly following the Supreme Court's decision in Checkmate Services Pvt Ltd v. JCIT [2022] 448 ITR 518.

7. That on the facts and circumstances of the case and in law, the learned Commissioner erred in not appreciating fact of amendment made by Finance Act, 2021 to S. 36(1)(va) and that the said amendment is effective only from AY 2021-22 and onwards.

8. That the learned Commissioner has erred in confirming the tax and interest u/s 234(A), 234(B) and 234(C) levied by AO CPC vide aforesaid order u/s 143(1) amounting to Rs.34,15,713 and Rs. 34,157, Rs. 7,17,297 and Rs. 1,72,493 respectively and final demand of Rs, 43,39,660.

9. That the Appellant craves leave to add to and or to alter, amend, rescind, modify, the grounds herein above or produce further documents before or at the time of hearing of this Appeal.”

2. The brief facts of the case are as follows:

2.1 For the assessment year 2018-19, return of income was e-filed on 13/12/2019 declaring total income of Rs. 93,28,077/-. The return was processed u/s 143(1) of the I.T.Act. In the intimation issued u/s 143(1) of the I.T.Act, the CPC disallowed the employees' contribution to PF and ESI to the tune of Rs. 1,01,88,985/-. The reason for making the disallowance was that the assessee did not remit the employees' contribution to PF and ESI within the due date specified under the respective Acts.

3. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A).

3.1 Before the Ld.CIT(A), it was submitted that the assessee remitted the employees contribution to PF and ESI before the due date of filing of the return u/s 139(1) of the I.T.Act and that the assessee is entitled to deduction of the same. The Ld.CIT(A) dismissed the appeal of the assessee by relying on decision of *Hon'ble Supreme Court in case of Checkmate Services (P.) Ltd. Vs CIT-1* reported in [2022] 143 taxmann.com 178 (SC). The CIT(A) noticed the difference between the employees' contribution and the employer's contribution and held insofar as the employees' contribution to ESI and PF, the same need to be remitted within the due date as mentioned in the respective Acts. The CIT(A) also relied on the amendment brought about to section 36(1)(va) and 43B of the I.T.Act.

4. Aggrieved, the assessee has filed this appeal before the *Tribunal*.

4.1 The only issue that arises is disallowance on delayed payment of employee's contribution to ESI and PF made by the assessee beyond the due date by invoking the provisions of section 36(1)(va) of the Act, but within the due date for filing return of income u/s.139(1) of the Act.

4.2 On this issue, *Hon'ble Supreme Court* in the case of *CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022* held that allowability/treatment of 'delayed' Employee PF Contribution payment to be taxable in hands of assessee under provisions of Income Tax Act. *Hon'ble Supreme Court* held that Section 36(1)(va) and Section 43B(b) operate on totally different equilibriums and have different parameters for due dates, i.e., employee's contribution is linked to payment before the due dates specified in the respective Acts and employer's contribution is linked to the payment before the prescribed due date for filing of return u/s. 139(1) of the Act. It was held that result of any failure to pay within the prescribed dates also leads to different results. *Hon'ble Supreme Court* was of the opinion that in the case of employee's contribution, any failure to pay within the prescribed due date under the respective PF Act or Scheme will result in negating employer's claim for deduction permanently forever u/s.36(1)(va) of the Act. On the other hand, delay in payment of employer's contribution is visited with deferment of deduction on payment basis u/s.43B of the Act and is therefore not lost totally.

Therefore, as per the above decision, the disallowance made by the Revenue authorities, were fully justified.

Accordingly, the grounds raised by the assessee stands dismissed.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 26th April, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 26th April, 2023.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore