

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 591/Mum/2023
(A.Y.2020-21)**

Vijay Bag Singh Rajpurohit Plot No. 4, Vikas Bunglow Behind Bahari Petrol Pump, Sion, Trombay Road Chembur, Mumbai 400071	Vs.	Asst. Commissioner of Income Tax, CPC Bengaluru 560100
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ADQPR7848L		
Appellant	..	Respondent

Appellant by :	Vipul Shriyan
Respondent by :	Vranda U Matkari

Date of Hearing	27.04.2023
Date of Pronouncement	28.04.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 27.12.2022 for A.Y. 2020-21.

The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law the Commissioner of Income Appeals National Faceless Appeal Centre, (Ld CIT(A)) erred in upholding disallowance under section 36(1)(va) of the Income tax Act, 1961 (the Act) by CPC, Bengaluru under intimation u/s 143(1) of the Act in respect of employees contribution made to the provided fund and other funds which was paid after the due date prescribed under the respective law but before the end of the Financial year and due date of filing return of income is covered u/s 430*
- 2. On the facts and circumstances of the case and in law the Ld. CITA erred in noting that the hearing Notices were Remained uncompiled while the Appellant had uploaded request for adjournment against Notice dated*

01 12 2022 and had duly filed Written Submission on 20 12 2022 with all supporting with Acknowledgement Number 854295551201222 against 2 Notice dated 15.12.2022

3. *The Ld CIT(A) failed to consider the submission of the Appellant wherein it was submitted that the Jurisdictional Honable ITAT Mumbai decision dated 07.12.2022 in case of PR Packaging Service ITA No 2379/MUM/2022 which discussed the Supreme Court decision of Checkmate Service Pvt Ltd, is squarely covered in the Appellant's facts as the issue in hand is vide intimation u/s 143(1) and not of assessment u/s 143(3)*
4. *Without prejudice to the above, in the facts and circumstances of the case and in law, the Ld CIT(A) erred in upholding disallowance u/s 36(1)(va) without considering that the employees contribution made to the PF fund and ESIC fund were debatable at that point in time, so these disallowance are not covered under the ambit of provision of section 143(1) of the Act and hence the no adjustment can be made by intimation u/s 143(1)*
5. *Without prejudice to the above, the Ld CIT(A) erred in upholding disallowance u/s 36(1)(va), as there was no remark in Tax Audit Report u/s 44AB for disallowance of employees contribution to PF/ESIC funds, as it was only reporting of the due date and date of payment, which notes that the date of payment is before the due date of filing the return.*
6. *Without prejudice to the above, the said payment of PF/ESIC and other funds, should be allowed u/s 37 as business expenses being wholly incurred for the business of the Appellant*
7. *The Appellant prays that it may be allowed to add, alter or amend the above grounds of appeal and to make detailed submissions at the time of appeal.”*

2. The fact in brief is that the CPC Bangalore found that assessee has not deposited the employee's contribution towards PF/ESIC to the amount of Rs.3,59,259/- to the government account within the due date as prescribed in PF/ESIC Act. Therefore, the CPC has made adjustment u/s 143(1) of the Act and disallowed the impugned amount on account of late deposit of employees contribution towards PF/ESIC u/s 36(1)(va) r.w.s 2(24)(x) of the Act to the government account beyond the due date as prescribed in the PF/ESIC Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016 dated 12.10.2022 held that if the employer did not deposit the amount towards employee's contribution on or before the due date as prescribed in the EPF/ESIC the assessee was not entitled to the deduction.

5. We consider that the case referred by the assessee is of no help in view of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016 dated 12.10.2022. The Hon'ble Supreme Court by the decision referred as supra set at rest the entire controversy wherein it is held that employer's have to deposit he employee's contribution towards PF/ESIC on or before the due date prescribed in the respective law for availing deduction. It is undisputed fact that in the case of the assessee he has not made any suo moto disallowance for not depositing the PF amount to the government account within the due date as prescribed in PF/ESIC Act. We consider that as per the judgment of the Hon'ble Supreme Court referred supra it is essential condition for allowing the impugned deduction that such amounts are deposited within the due date as prescribed in the specified Act. Therefore, following the decision of Hon'ble Supreme Court as supra we restore this issue to the file of the AO for deciding afresh in accordance with decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT -1 Civil Appeal No. 2833 of 2016 dated 12.10.2022. Therefore, the appeal filed by the assessee is treated as allowed for statistical purpose.

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

Order pronounced in the open court on 28.04.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 28.04.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.