

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

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

आयकरअपीलसं./ I.T.A. No.596/Mum/2023
(निर्धारणवर्ष / Assessment Year 2018-19)

Dow Chemical Internation P. Ltd. Unit no. 801, 8 th Floor, Bldg no. 09, Gigaplex TTC Industrial Area, MIDC, Airoli, S.O. Navi Mumbai 400 708	बनाम/ Vs.	Assistant Director of Income Tax, Centralized Processing Centre, Bangalore- 560 500
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACD4467B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Anish Thacker, Lekh Mehta
प्रत्यर्थीकीओरसे/ Respondent by	:	Mahita Nair Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	04.05.2023
घोषणाकीतारीख / Date of Pronouncement	:	16.05.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal 29.12.2022 passed by NFAC Delhi for the assessment year 2018-19 in respect to adjustment made u/s. 143(1). In the grounds appeal assessee had challenged confirming

the disallowance of Rs. 1,08,01,691/- made u/s. 36 (1)(a), made in the intimation u/s. 143(1) issued by CPC Bangalore.

2. The briefs in facts are that, the return of income for the AY: 2018-19 was filed on 30.11.2018, declaring total income of Rs. 367,39,85,270/-. The said return was processed and in the intimation issued u/s. 143(1), one of the disallowances made was of Rs. 1,08,01,691/- made u/s. 3615A for delayed payment of employees provident fund & ESI which were deposited after the due date prescribed under the respective Act and rule of PF & ESI but was before the due date of filing the return of income.

3. The Ld.CIT (A) following the judgment of **Hon'ble Supreme Court in the case of checkmate services P.Ltd Vs. CIT reported in 2022 143 taxman.com 178**, decided the issue against the Assessee.

4. Before us, the Ld. Counsel in additional ground stating under:

On the facts and in the circumstances of the case and in law, out of addition made of INR 1,08,01,691 under section 36(1)(va) of the Act, addition of amount of INR 99,08,357 should not have been made, being paid within the due date

prescribed under the Employees Provident Fund and Miscellaneous Provisions Act.

5. He has also filed petition for admission of additional evidence and Rule 29 of ITAT rules, stating as under:

The tax auditor has made certain errors while reporting under clause 20(b) of TAR and hence there is an addition made in the intimation of INR 1,08,01,691 In order to bring the correct facts on record, the Appellant wishes to file certain documentary evidence towards proof of payment in respect of additions made. The details of payments made together with provident fund challans, receipt of payments and extracts of bank statement in support of payments are enclosed from Page 62 to 89 herewith. The Appellant through oversight missed noting errors made in tax audit report as based on certain judicial precedence, the addition of employees' contribution to provident funds was not sustainable under section 36(1)(va) if payment is made on or before the due date for filing the return. It is only after the order received from the Commissioner of Income-tax (Appeals), the Appellant has noted the said factual errors in tax audit report. In order to bring correct facts on records and for want of justice, the Appellant pray that this additional evidence be admitted and considered while deciding additional ground taken in this respect. This additional evidence is relevant to substantiate the additional grounds taken in the appeal. On the basis of additional evidence, the addition of INR 1,08,01,691 made

in the intimation would reduce to INR 8,93,334 (i.e. INR 1,08,01,691 INR 99,08,357).

6. Thus, he submitted that the only disallowance which is called for in view of the judgment of **Hon'ble Supreme Court in the case of checkmate services P.Ltd Vs. CIT reported in 2022 143 taxman.com 178**, would worked out to Rs. 8,93,334/- as payment amounting Rs. 99,08,,357/- was made before the due date. In support he has filed following details of actual payments to the provident fund and the details even in the tax credit report.

Sr . No	Salary Month	TRRN	Admin Charges	Employer Contribution	Employee Contribution	Total	Date of Payment (Debited to Bank)	Whether delayed	Income as per 36(1) (va)
1.	Apr-17	3191705007666	4,11,300	76,47,485	89,50,994	1,70,09,779	15-05-17	No	-
		3191705007681	216	3,132	3,007	6,355	15-05-17	No	-
			20,293	3,75,007	3,74,632	7,69,932	16-06-17	Yes	3,74,632
		3191706007718			93,28,633				
2.	May-17	3191706006378	4,11,125	76,44,233	90,11,455	1,70,66,813	14-06-17	No	-
		3191706006400	196	3,736	3,628	7,560	14-06-17	No	-
		3191706007701	20,404	3,77,073	3,76,698	7,74,175	16-06-17	Yes	3,76,698
		3191707008904	7,692	1,42,154	1,42,004	2,91,850	14-09-17	Yes	1,42,004
		3101705022618	31,998	5,95,152	6,09,977	12,37,127	01-06-17	No	-
					1,01,43,762				
Less: Addition made under section 36(1) (va)									
For Apr 2017- 93,28,632									
Fpr May2017- 14,73,059									
1,08,01,691									
Relief to be Granted									
99,08,357									

7. The aforesaid table shows that, most of the payments were made before due date. Accordingly, we admit the aforesaid

evidences and remit this issue back to the back to the file of AO to verify to the payments and allow the ESI and payment which has been made on or before the due date.

8. Accordingly, appeal of the assessee is allowed for the statistical purposes.

Orders pronounced in the open court on 16th May, 2023.

Sd/-
(Padmavathy S)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 16.05.2023

Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai