

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

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

ITA No. 1838/Del/2022  
(Assessment Year : 2017-18)

S.M.S Exports C-174, Okhla Industrial Area Phase-1, New Delhi-110 020  <b>PAN No. AABFS 9700 Q</b> <b>(APPELLANT)</b>	Vs.	CIT-24 New Delhi  <b>(RESPONDENT)</b>
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Assessee by	-None-
Revenue by	Shri Kumar Parnav, Sr. D.R.

Date of hearing:	18.05.2023
Date of Pronouncement:	24.05.2023

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 22.07.2022 of the Commissioner of Income Tax (Appeals)-24, New Delhi relating to Assessment Year 2017-18.

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

3. Assessee is a partnership firm deriving income from Exporting Garments. Assessee electronically filed its return of income for A.Y. 2017-18 on 28.10.2017 declaring an income of Rs.27,61,77,830/-. Thereafter, notices u/s 143(2)/142(1) of the Act was issued for furnishing the details. In response to which various information and particulars were filed from time to time by the assessee. Thereafter, assessment was framed u/s 143(3) of the Act vide order dated 26.12.2019 and the total income was determined at Rs.27,91,55,430/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 22.07.2022 in Appeal No.CIT(A), Delhi-10/11286/2019-20 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds:

- “1. *That the Ld. CIT(A) has wrongly and illegally passed an order u/s 250 dated 22.07.2022 confirming the addition of Rs.19,39,928/- to the returned of income of Rs.27,61,77,820/-.*
2. *That the order has been passed by the Ld CIT(A) in haste and without providing fair and reasonable opportunity to the appellant.*
3. *That the Ld CIT(A) has grossly erred in confirming the disallowance of sum of Rs.19,39,928/- on account of alleged delayed payment of Employees Contribution to EPF of Rs.18,28,391/- and ESI of Rs.1,11,537/- during the year under section 36(1)(va) of the Act made by Ld. ACIT.*
4. *That even otherwise the adjustment so made in any order of a debatable and contentions issue is impermissible and thus untenable.*

5. *That the Ld CIT(A) has not considered the fact that appellant has duly deposited all the statutory dues of ESI and EPF which has been disallowed before due date of filing of Income Tax Return as required by Section 139(1) and section 43B of the Act. Hence disallowance made is devoid of any legal basis and hence ought to be deleted.*
6. *That the CIT(A) has failed to appreciate that disallowance made is contrary to judgments of Hon'ble Supreme Court in the case of Vinay Cement Limited, judgment of Hon'ble High Court in the case of PCIT vs. Pro Interactive Service (India) Pvt. Ltd. in ITA No.983/2018 (Del), judgments of Division Bench of Delhi High Court in Commissioner of Income Tax vs. AIMIL Limited, (2010) 321 ITR 508 (Del) and judgment of Apex Court in the case of IT Vs. Alom extrusions Ltd. reported in 319 ITR 306, Judgment of G Bench of ITAT Delhi in various cases namely Pratham Motors Pvt. Ltd. ITA No.1051/Del/2022 (2018-19), Seagull Laboratories Pvt. Ltd. ITA No.1182/Del/2022 (2019-20), Kalinga Cables & Conduit Co. ITA No.1121/Del/2022 (2019-20) etc. therefore the same is untenable and liable to be deleted as such.*
7. *That the consequential levy of interest u/s 234A and 234C are also untenable and hence should not be charged.*
8. *That the appellant craves leave to alter, amend, delete or add all or any ground before or at the time of hearing.”*

5. 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.

6. 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.19,39,928/- made u/s 36(1)(va) of the Act on account of delayed deposit of EPF & ESI dues. It is the contention of the assessee in the grounds 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. In support assessee has relied on various decisions.

7. 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.

8. We have heard the Learned DR and perused the material available on record. The issue in the present appeal 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. We further find that the Delhi Benches of ITAT in various decisions (one of them being ITA No.460/Del/2022 in the case of M/s. Incedo Technology Solutions Limited vs. DCIT) by following the decision of Pune Bench of Tribunal in the case of **Cemetile Industries vs. ITO in ITA No.693/PUN/2022 and others** has held that AO was justified in making disallowance of delayed deposit of PF & ESIC in the intimation u/s 143(1) of the Act.

9. We are of the view that the ratio of the aforesaid decisions of Hon'ble Apex Court and the Delhi Tribunals 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) and Delhi Tribunal in the case of M/s. Incedo Technology Solutions Limited (supra) find no reason to interfere with the order of lower authorities and **thus the grounds of assessee are dismissed.**

**10. In the result, appeal of assessee is dismissed.**

**Order pronounced in the open court on 24.05.2023**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 24.05.2023

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI