

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 1831/Mum/2021  
(A.Y.2019-20)**

Simple Logic IT Private Limited, 10, Arihant, 90 Feet Road, Ghatkopar (E) Maharashtra – 400077	Vs.	Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) Delhi
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AANCS3390M		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sanjeev Ranjan

Date of Hearing	11.05.2023
Date of Pronouncement	17.05.2023

**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 18.08.2021 for A.Y. 2019-20. The assessee has raised the following grounds before us:

- “1. The Learned CIT(A)- NFAC, Delhi erred in disallowing claim of ESIC and provident fund even though the payment was made within due date and added it to the total income of the Appellant.
2. The Learned CIT(A)- NFAC, Delhi failed to consider the submission given in tabular form wherein the ESIC and PF paid date wise were given.
3. The Learned CIT(A)- NFAC, Delhi, failed to consider that the Appellant has made payment on and before 15/04/2019 which within the due date as mentioned in Sec 36(1) (va) and much more prior to due date of filling of ROI as the due date for the AY 2019-20 which was extended to 31/10/2019 and therefore the assessee is eligible for deduction of payment for ESIC and provident fund provident.
4. The Learned CIT(A)- NFAC, Delhi, failed to consider various judgements covering the subject matter.

5. *The appellant craves leave to add, to alter, vary or cancel any of the above grounds of appeal.*
2. During the course of appellate proceedings before us neither anybody has attended from the side of the assessee nor filed any other submission in spite of serving the notice of hearing, therefore, the appeal of the revenue is adjudicated after hearing the ld. D.R and after considering the material available on record.
3. Fact in brief is that ITAT vide ITA No. 1831/Mum/2021 dated 21.04.2022 has allowed the claim of the assessee with respect to deduction pertaining to amount deposited towards employee's contribution to PF/ESIC beyond the due date for payment as specified in the PF/ESIC Act but paid before the due date of filing return of income after following the decision of ITAT vide ITA No. 6425/Mum/2017 and 6426/Mum/2017 dated 27.07.2021 in the case of DCIT Vs. M/s Maharashtra Tourism Development Corporation Ltd.
4. Subsequently, the ITAT vide order MA No. 427/Mum/2022 dated 15.03.2023 has recalled the impugned order of the Tribunal after considering the 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.
5. Heard the ld. D.R and perused the material on record. 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.16,25,520/- to the government account within the due date as prescribed in PF/ESIC Act. Therefore, the CPC has disallowed the amount of Rs. 16,26,520/- while processing the return of income u/s 143(1) of the Act on account of late deposit of employee's 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 of the Act.

6. We have perused the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. as referred supra wherein held that if the employers did not deposit the amount towards employee's contribution on or before the due date as prescribed in the EPF/ESIC Act, the assessee was not entitled to the deduction. The Hon'ble Supreme Court vide the decision referred as supra set at rest the entire controversy wherein it is held that the employer's have to deposit the employee's contribution towards PF/ESIC on or before the due date prescribed in the respective law for claiming the deduction.

7. However, the claim of the assessee that it had payment towards contribution received from the employees within the due date is required to be verified by the assessing officer in accordance with the provision of section 36(1)(va) of the act and the decision of the Hon'ble Supreme Court in the case of Checkmate Servies Pvt. Ld. as referred supra in this order. Subject to the above terms after following the decision of Hon'ble Supreme Court as supra we restore this issue to the file of the assessing officer for deciding afresh in accordance with the 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 purposes.

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

Order pronounced in the open court on 17.05.2023

Sd/-  
(Vikas Awasthy)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 17.05.2023

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.**