

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

**BEFORE  
SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.685/M/2023  
Assessment Year: 2019-20**

CATWALK WORLDWIDE PVT LTD, Unit NO. 405-408, Tanti A Jogani Industrial Premises, JR Boricha Marg, Sitaram Mill Compound, Lower Parel, Maharashtra	VS.	ACIT, CPC, Bangalore
(Appellant)		(Respondent)
<b>PAN: AACCC1276B</b>		

**Present for:**

Assessee by : Mr. Nimesh Vora & Moksha Mehta  
Revenue by : Mr. K. C. Selvamani, CIT DR

Date of Hearing : 16.05.2023  
Date of Pronouncement : 25.05.2023

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

The appellant, CATWALK WORLDWIDE PVT LTD (hereinafter referred to as ‘the assessee’) by filing the present appeals, sought to set aside the impugned order dated 10.01.2023 passed National Faceless Appeal Centre (NFAC), [hereinafter referred to as the CIT(A)] qua the assessment year 2019-20 on the grounds inter-alia that :-

*“On the facts and in the circumstances of the case and in law, the learned CIT(A):*

*1. erred in upholding the intimation issued u/s. 143(1) of the Act, wherein the payments made by the Appellant*

*towards employee's contribution for P.F. and ESIC were disallowed u/s. 36(1)(va) of the Act.*

*2. failed to appreciate that the said disallowance made u/s. 36(1)(va) of the Act, was beyond the scope of adjustments allowed to be made u/s. 143(1) of the Act.*

*3. erred in upholding the disallowance made by the CPC, in respect of payment made towards employee's contribution for P.F. and ESIC for the month of June 2018, aggregating to Rs. 7,67,250, despite the fact that the said payment was made within the period specified under relevant laws.*

*4. erred in upholding the disallowance made u/s. 36(1)(va) of the Act of Rs. 13,21,554 on the basis of disclosure made in tax audit report, without appreciating the fact that in the tax audit report, total payments made, after 15th day of month in which contribution was due, was disclosed at Rs. 12,47,865.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: the return of income filed by the assessee company for the year under consideration claiming deduction to the tune of Rs. 13,21,554/- being employee's contribution of ESIC & PF, was processed u/s 143(1) read with Section 154 of the Income Tax Act, 1961 (for short “the Act”) by making disallowance of deduction claimed by the assessee on account of delay in depositing employee's contribution of PF & ESIC prescribed under the relevant Act and CPC/ AO thereby framed the assessment u/s 143(1) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned

order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and material available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. A.R. for the assessee company challenging the impugned order passed by the Ld. CIT(A) contended that disallowing employees' contribution to PF & ESIC while processing the return under section 143(1) is against the provision of the Act as it would not fall within the ambit of prima-facie adjustment, hence liable to be allowed and that when the issue in question is a debatable one view taken in favour of the assessee company is to be prevailed and relied upon plethora of orders passed by the Hon'ble High Court of Gujarat, Hon'ble High Court of Madras and CIT Vs. GVK Industries Ltd (2023) 147 taxmann.com 281 (Telegana HC).

6. However, on the other hand, the Ld. D.R. for the Revenue by relying upon the order passed by the Ld. CIT(A) contended that when the employees contribution of PF has not been deposited by the employer before due date prescribed under the Act assessee is not entitled for any deduction and relied upon the decision of the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT order dated 12.10.2022 which supported the order passed by the Ld. CIT(A)

7. So far as disallowance made by the AO and confirmed by the Id CIT(A) to the tune of Rs. 13,21,554/- for AY 2019-20 on account of late deposit of employees contribution of PF& ESI after due date prescribed under the relevant act is concerned, undisputedly, the assessee has deposited payment of employee's contribution on account of PF & ESI after due date prescribed under section 36(1)(va) of the Act but before the due date of filing the return.

8. We have perused the order passed by the Ld. CIT(A) who has disallowed the deduction claimed by the assessee qua the Employees' contribution on account of PF deposited after the due date prescribed under the relevant Act by relying upon the provisions contained under section 36(1)(va) and 43B of the Act having been amended vide Finance Act, 2021 wherein explanation 2 and explanation 5 have been inserted.

9. However, now the issue raised before the Bench is:

*"as to whether payment by the employers qua PF contribution of employees after due date prescribed under the relevant Act is an allowable deduction under section 36(1)(va) read with section 43B"?*

has been decided against the assessee by the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT (supra), the operative findings of the Hon'ble Supreme Court are as under:

*"51. The analysis of the various judgments cited on behalf of the assessee i.e., Commissioner of Income-Tax v. Aimil Ltd; Commissioner of Income-Tax and another v. Sabari Enterprises; Commissioner of Income Tax v. Pamwi Tissues Ltd.; Commissioner of Income-Tax, Udaipur v. Udaipur Dugdh Utpadak Sahakari Sandh Ltd. and Nipso Polyfabriks (supra) would reveal that in all these cases, the High Courts*

*principally relied upon omission of second proviso to Section 43B (b). No doubt, many of these decisions also dealt with Section 36(va) with its explanation. However, the primary consideration in all the judgments, cited by the assessee, was that they adopted the approach indicated in the ruling in Alom Extrusions. As noticed previously. Alom Extrusions did not consider the fact of the introduction of Section 2(24)(x) or in fact the other provisions of the Act.*

*52. When Parliament introduced Section 43B, what was on the statute book, was only employer's contribution (Section 34(1)(iv)). At that point in time, there was no question of employee's contribution being considered as part of the employer's earning. On the application of the original principles of law it could have been treated only as receipts not amounting to income. When Parliament introduced the amendments in 1988-89, inserting Section 36(1)(va) and simultaneously inserting the second proviso of Section 43B, its intention was not to treat the disparate nature of the amounts, similarly. As discussed previously, the memorandum introducing the Finance Bill clearly stated that the provisions-especially second proviso to Section 43B - was introduced to ensure timely payments were made by the employer to the concerned fund (EPF, ESI, etc.) and avoid the mischief of employers retaining amounts for long periods. That Parliament intended to retain the separate character of these two amounts, is evident from the use of different language. Section 2(24)(x) too, deems amount received from the employees (whether the amount is received from the employee or by way of deduction authorized by the statute) as income it is the character of the amount that is important, i.e., not income earned. Thus, amounts retained by the employer from out of the employee's income by way of deduction etc. were treated as income in the hands of the employer. The significance of this provision is that on the one hand it brought into the fold of "income" amounts that were receipts or deductions from employees income; at the time, payment within the prescribed time by way of contribution of the employees' share to their credit with the relevant fund is to be treated as deduction (Section 36(1)(va)). The other important feature is that this distinction between the employers contribution (Section 36(1)(iv)) and employees' contribution required to be deposited by the employer (Section 36(1)(va)) was maintained and continues to be maintained. On the other hand, Section 43B covers all deductions that are permissible as expenditures, or out-goings forming part of the assessee's liability. These include liabilities such as tax liability, cess*

*duties etc. or interest liability having regard to the terms of the contract. Thus, timely payment of these alone entitle an assessee to the benefit of deduction from the total income. The essential objective of Section 43B is to ensure that if assessees are following the mercantile method of accounting, nevertheless, the deduction of such liabilities, based only on book entries, would not be given. To pass muster, actual payments were a necessary pre-condition for allowing the expenditure.*

*53. The distinction between an employer's contribution which is its primary liability under law in terms of Section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va)) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) unless the conditions spelt by Explanation to Section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B.*

*54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute: Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions-which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are*

*others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non- obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.*

*55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed."*

10. We are of the considered view that when the issue in question has been settled by the Hon'ble Supreme Court of India in case of Checkmate Services Pvt. Ltd. (supra) once for all the case law relied upon by the assessee is not applicable to the facts and circumstances of the case. Moreover, when the assessee has apparently made incorrect claim in its return of income which is against the provisions contained under PF & ESIC as to depositing the employees' contribution on account of PF & ESIC within a particular time frame, any deposit thereafter would not be entitled for deductions as has been held by the Hon'ble Supreme Court.

11. Moreover, in view of the law laid down by the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. (supra), which is law of the land from the date of inception of the Act,

the issue raised by the Ld. A.R. for the assessee that it is a debatable issue is misconceived contention as the debate on the issue has already been set at rest. So since the assessee has failed to comply with the condition precedent for depositing the employees' contribution on account of PF & ESIC before the due date prescribed under the Act the same has been rightly disallowed by the Ld. CIT(A).

12. Following the decision rendered by the Hon'ble Supreme Court in case of Checkmate Services P. ltd Vs. CIT(supra), I am of the considered view that that this issue has rightly been decided against the assessee by the ld CIT(A) to the extent that the actual amount deposited by the assessee on account of employees contribution on account of PF & ESI late as prescribed under the Act is to be disallowed.

13. However, the ld AR for the assessee contended that as per Form 3CD total payment deposited by the assessee on account of employee's contribution of PF&ESIC late as prescribed under the relevant Act was Rs. 12,47,865/- whereas CPC/ AO has disallowed the amount of Rs. 13,21,554/- and brought on record Form 3CD as Annexure which is extracted, for ready perusal, as under:-

Annexure 'A'

Before the Hon'ble Income Tax Appellate Tribunal  
'C' Bench, Mumbai  
In the case of  
Catwalk Worldwide Private Limited  
vs.  
Asst. Director of Income tax, CPC

Assessment Year 2019-20  
ITA No.: 685/Mum/2023

Statement showing total payments towards employee's contribution for Provident Fund and ESIC, which were belated as per Form 3CD

Sr. No.	Nature of Fund	Sum received from employees	Due Date for payment	Sum actually paid	Actual Date for Payment
1	Provident Funnd	29,681	15/05/2018	29,681	10/06/2019
2	Provident Funnd	30,268	15/06/2018	30,268	10/06/2019
3	Provident Funnd	6,49,572	15/07/2018	6,49,572	16/07/2018
4	Provident Funnd	28,688	15/07/2018	28,688	10/06/2019
5	Provident Funnd	37,624	15/08/2018	37,624	10/06/2019
6	Provident Funnd	39,703	15/09/2018	39,703	10/06/2019
7	Provident Funnd	32,464	15/10/2018	32,464	10/06/2019
8	Provident Funnd	35,521	15/11/2018	35,521	10/06/2019
9	Provident Funnd	31,460	15/12/2018	31,460	10/06/2019
10	Provident Funnd	29,822	15/01/2019	29,822	10/06/2019
11	Provident Funnd	48,390	15/02/2019	48,390	15/04/2019
12	Employee State Insurance Corporation	1,15,542	15/05/2018	1,15,542	16/05/2018
13	Employee State Insurance Corporation	1,17,678	15/07/2018	1,17,678	16/07/2018
14	Employee State Insurance Corporation	19,568	15/04/2018	19,568	19/04/2018
15	Any Other Welfare Fund	1,884	15/07/2018	1,884	20/07/2018
16	<b>Total Payments reported as belated in the Tax Audit Report</b>	<b>12,47,865</b>		<b>12,47,865</b>	
17	Less: Total Payment for which the due date fell on Sunday and paid on immediate following working day, which was the due date as per Sec. 10 of General Clauses Act, 1897. (Sr. no. 3 and 13)	-7,67,250		-7,67,250	
18	<b>Total Payments which were paid beyond the statutory due dates</b>	<b>4,80,615</b>		<b>4,80,615</b>	

14. We have perused the Form 3CD which shows an error in the amount mentioned in Form 3CD and actual disallowance made by the AO. The AO is directed to verify this fact and disallow the amount which was actually deposited on account of PF&ESIC late as prescribed in the Act.

15. The Id AR for the assessee further contended that out of total amount deposited late by the assessee on account of employee's contribution for PF&ESIC amounting to Rs. 12,47,865/- on 16.07.2018, with one day delay, as on 15.07.2018, was Sunday and sought to allow the same on the ground that when last date of depositing the employee's

contribution of PF&ESIC fell on Sunday the said payment deposited on 16.07.2018, the very next day is liable to be treated within time and relied upon Circular No.676 dated 14.01.1994, CBDT and Section 10 General Clause Act, 1897. We have examined the calendar for the month of July 2018 which shows 15.07.2018 fell on Sunday.

16. For facilities of reference Circular No. 676 dated 14.01.1994 and Section 10 General Clause Act, 1897 is extracted as under:-

**“Circular No. 676 dated 14.01.1994, CBDT**

*1197. Whether, in case last day for payment of any instalment of advance tax is day on which receiving bank is closed, assessee can make payment on next immediately following working day, and in such cases mandatory interest leviable under sections 234B and 234C would not be charged*

*1. Representations have been received by the Board seeking waiver of interest chargeable under sections 234B and 234C of the In-come-tax Act, 1961 for default in payment of instalments of ad-vance tax by the due dates which are prescribed under section 211 of the Income-tax Act. In cases where the last date for making payment of such instalments (i.e., 15th September, 15th December and 15th March) happens to be a holiday and the assessee pays the due amount of advance tax on the next working day.*

*2. The matter has been carefully considered by the Board and it is felt that in such cases section 10 of the General Clauses Act, 1897 will be applicable. This section lays down that where any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office (in the present case the bank which is*

*authorised to receive payment of advance tax from the assessee) is closed on that day or on the last day of the prescribed period, the Act or proceeding shall be considered as done or taken in due time after it is done or taken on the next day, afterwards, on which the Court or office (or the bank) is open. In view of this provision, it is hereby clarified that if the last day for payment of any instalments of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C of the Income-tax Act, 1961 would not be charged.*

*Circular : No. 676, dated 14-1-1994.*

***Section 10 in The General Clauses Act, 1897***

*10 Computation of time.*

*(1) Where, by any<sup>19</sup> [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877)<sup>20</sup>, applies.*

*(2) This section applies also to all<sup>19</sup> [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.*

17. Bare perusal of the Circular No. 676 (supra) goes to show that “when in case last day for payment of any installment of advance tax is day on which receiving bank is closed, assessee can make payment on next immediately following working day, and in such cases mandatory interest leviable under sections 234B and 234C would not be charged.” Though this proposition is not directly applies to the issues at hand but when it is examined in the interest of justice it certainly favors the assessee.

18. Furthermore, section 10 of the General Clauses Act is very categorical that “when any Act or proceedings is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last of the prescribed period, the Act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.” This proposition of law applies by Central Act and Regulation made on or after 14.01.1877.

19. In view of the matter, by applying the provisions contained u/s 10 of the General Clauses to the facts and circumstances of the case, we are of the considered view that payment of Rs.76,7,250/- made by the assessee on 16.07.2018 qua year under consideration is to be taken within time as there was no unjust enrichment of the assessee nor there was any malafide on its part to misappropriate the employee’s contribution of PF & ESI rather deposited the same on the very next day of opening the banks, the 15.07.2018 being Sunday.

20. Resultantly, the appeal filed by the assessee is partly allowed, however, subject to the verification of the payment sought to be made by the assessee within time with one day delay due to Sunday on 15.07.2018.

**Order pronounced in the open court on 25.05.2023.**

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 25.05.2023.

\* Ajay Kumar Keot, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.