

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.2894/DEL/2022
Assessment Year 2019-20

S.R. Hospital 128/5, Sarvat Gate, Muzaffarnagar	v.	ITO Ward-3(1)(1) Muzaffarnagar.
TAN/PAN: ADHFS7823F		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	08	06	2023
Date of pronouncement:	13	06	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi ('CIT(A)' in short) dated 21.11.2022 arising from the assessment order passed by the Assessing Officer (AO) dated 12.04.2022 under Section 154 of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. As per the grounds of appeal, the assessee has challenged the disallowance of employees' contribution to PF/ESIC under Section 36(1)(va) r.w. Section 43B of the Act amounting to Rs.5,75,152/-.

3. When the matter was called for hearing, none appeared for

the assessee. Under the circumstances, we proceed *ex-parte* in the absence of the assessee.

4. Ld. Sr.DR for the Revenue, on its part, contended that CPC has rightly made additions of Rs.5,75,152/- to the returned income of the assessee on account of late deposits of employees' contribution to PF/ESIC while processing the return of income under Section 143(3) of the Act. The rectification application under Section 154 by the assessee thereon has been rightly rejected and confirmed by the CIT(A) in the light of the judgment rendered in the case of *Checkmate Services Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC)*. The ld. Sr.DR for the Revenue submitted that even for the Assessment Year 2019-20 in question, belated deposit of employees' contribution held in trust by the employer assessee are to be reckoned as taxable income under Section 2(24)(X) r.w. Section 43B and deduction under Section 36(1)(va) of the Act would not be permissible. The ld. Sr.DR on behalf of the Revenue further contended that the delayed deposits of employees' contribution indicated in the audit report is sufficient for adjustment under Section 143(1) of the Act as held in *Weather Comfort Engineers Pvt. Ltd. vs. ACIT-CPC Bangaluru ITA No.959/Del/2021 order dated 15.02.2023*.

5. The issue towards taxability of belated employees' contribution to PF/ESIC is no longer *res integra* in the light of the judgment of Hon'ble Supreme Court in the case of *Checkmate Services (supra)*. The Hon'ble Supreme Court in this case observed that Income Tax Act differentiates between the employees' contribution and employer contribution to the PF/ESIC act while in respect employer's contribution, Section

43B is applicable but however with respect of employees' contribution the conditions specified in Section 36(1)(va) is applicable and Section 43B(b) does not cover employees' contribution deducted by employer from salary of the employees. The Co-ordinate Bench of Tribunal in *Weather Comfort (supra)* has held that such adjustment/disallowance is permissible in the proceedings carried out under Section 143(1) of the Act. In parity, we do not see any merit in the case of the assessee for impermissibility of such adjustment under Section 143(1) of the Act.

6. However in the same vain noted that the assessee in its paper book has claimed that PF/ESIC contribution to the respective funds have been duly made within the specified time period and misreported in the tax audit report due to inadvertence. The proof of payments / challans were also placed on record. The assessee thus claims that it has made timely payment of both employers and employees' contribution which fact has been totally disregarded by the CIT(A). As per the paper book, the assessee also submits that Chartered Accountant has prepared a letter certifying the correct payment details and thus such facts need to be taken cognizance.

7. Without expressing any opinion on merits on such aspect, we deem it expedient to restore the matter to the file of the designated Assessing Officer. It shall be open to the assessee to place factual matrix before the Assessing Officer and take all pleas for eligibility of deduction for evaluation of the Assessing Officer. The Assessing Officer shall examine this aspect and pass afresh assessment order in accordance with law after giving proper

opportunity.

8. Hence, in terms of such observations, the intimation for Assessment Year 2019-20 is set aside and the issue towards claim of deduction under Section 36(1)(va) is restored back to the file of the AO for fresh determination in accordance with law.

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

Order pronounced in the open Court on 13/06/2023.

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /06/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar