

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 2740/Del/2022
Assessment Year: 2019-20**

Vigilant Security Placement &
Detective Services Pvt. Ltd., P-23,
Old Double Story, Lajpat Nagar-4,
New Delhi.

PAN: AAACU0237C
(Appellant)

Versus DCIT, Circle 16(1),
New Delhi.

(Respondent)

Assessee by: Dr. Rakesh Gupta, Advocate &
Sh. Somil Aggrawal, Advocate
Revenue by: Sh. Vivek Vardhan, Sr. DR

Date of hearing : 13.06.2023
Date of pronouncement : 13.06.2023

ORDER

PER SAKTIJIT DEY, J.M.:

This is an appeal by the assessee against the order dated 11.11.2022 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2019-20.

2. The dispute in the present appeal is confined to disallowance of Rs.2,65,53,841/- on account of delay in depositing employees contribution to provident fund (PF) and Employees State Insurance (ESI).

3. Briefly, the facts are, while processing return of income filed by the assessee for the impugned assessment year, the Central Processing Centre (CPC), found that though, the assessee has claimed deduction of expenses on account of payment of employees' contribution to PF and ESI, however, such amounts were not deposited within the due date as specified in PF and ESI Acts. Accordingly, CPC disallowed the deduction claimed by the assessee while issuing intimation u/s. 143(1) of the Act. Against the said intimation, the assessee preferred appeal before the first appellate authority. However, the first appellate authority did not find merit in the submissions of the assessee and accordingly upheld the disallowance.

4. We have heard Dr. Rakesh Gupta, learned counsel for the assessee and Shri Vivek Vardhan, learned Sr. Departmental Representative. It is the case of the assessee that factually there is no delay in depositing employees contribution to PF and ESI, as the month to be taken should be

the month in which the salary/wages has been disbursed. It is submitted, the months involved in the present appeal are April, 2018 to March, 2019. Therefore, the due date for depositing employees contribution towards PF and ESI in respect of these months should be 15.06.2018, 15.07.2018, 15.08.2018, 15.09.2018, 15.10.2018, 15.11.2018, 15.12.2018, 15.01.2019, 15.02.2019, 15.03.2019, 15.04.2019 and 15.05.2019. Thus, it is submitted, there being no delay in making deposits, the disallowance should not have been made. In support of such contention, he relied upon following decisions :

- (i). Fluid Air (India) vs. DCIT, (1997) 63 ITD 182 (Bom);
- (ii). Kanoi Paper & Industries Ltd. vs. ACIT (2002) 75 TTJ 448(Cal.)

5. Without prejudice to the aforesaid submission, learned counsel submitted that the present disallowance could not have been made by way of adjustment u/s. 143(1) of the Act.

6. Learned Departmental Representative strongly relied upon the observations of first appellate authority.

7. We have considered rival submissions and perused the materials on record. In our view, after the decision of Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT, 448 ITR 518 (SC), the disputed issue is no more *res integra*, as the Hon'ble Supreme Court has clearly and categorically held that in case employees contribution to PF and ESI have not been deposited within the due date prescribed under the PF and ESI Acts, the same cannot be allowed as deduction in view of the provisions contained under section 36(1)(va) of the Act. Hon'ble Supreme Court has further held that in such circumstances, the employees contribution to PF and ESI not deposited within the due date, shall be treated as income of the assessee u/s. 2(24)(x) of the Act. In that view of the matter, we are unable to accept assessee's contention that the disallowance cannot be the subject matter of adjustment u/s. 143(1) of the Act.

8. As regards the alternative contention of the assessee that the employees contribution to PF and ESI have been deposited within the due date keeping in view the fact that the months to be considered should be the month, in which, salary/wages are disbursed, we direct the Assessing Officer to examine the claim of the assessee strictly with reference to the

provisions contained under the PF and ESI Acts in respect of the mode and manner of depositing the employees contribution towards PF & ESI and decide the issue accordingly. Needless to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issue.

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

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

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated:13.06.2023.

*aks/-