

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.2143/Del/2022  
Assessment Year: 2018-19

Force Tech Securities (India) P. Ltd., E-135/136, Lajpat Nagar IV, Delhi 110024 <b>PAN AAACF 6042 N</b>	vs.	The DCIT, Circle-7, Delhi
(Appellant)		(Respondent)

For Assessee :	None
For Revenue :	Shri Vipul Kashyap Sr. DR

Date of Hearing :	18.04.2023
Date of Pronouncement :	16.06.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of NFAC, New Delhi dated 05.07.2022 for AY 2018-19.

2. When the appeal was called for hearing neither the assessee nor any authorized representative appeared nor any adjournment application has been filed despite several notices. However, on perusal of the appeal records and impugned order, we find that the appeal can be disposed of ex-parte qua assessee after hearing the arguments of Id. Senior DR. Therefore we proceed to adjudicate the appeal ex-parte qua assessee.

3. The Id. Senior DR has not objected or controverted to the above submissions of assessee explaining the delay in filing appeal. Therefore in view of order of Hon'ble Supreme Court (supra) we hold that the appeal has been filed within prescribed time limit including the extended time as per orders of Hon'ble Supreme Court. Accordingly, the appeal is treated as filed within prescribed time limit including extended time by Hon'ble Supreme Court. Hence we proceed to adjudicate the appeal.

4. Although the assessee has raised as many as nine grounds in this appeal but the sole grievance of assessee is that the Assessing Officer as well as Id. CIT(A) was not

correct in confirming the addition of Rs. 5,39,686/- on account of delay in deposit of employee share of ESI & PF u/s. 36 of the Income Tax Act 1961 (for short the 'Act')

5. The assessee has challenged order of Id. CIT(A) sustaining disallowance made by DCIT, CPC Bangalore u/s. 36(1)(va) of Rs. 5,39,686/- on account of delay in deposit of employees contribution towards PF & ESI. The assessee has also alleged that the Ld. CIT(A) erred in confirming the disallowance under section 36(1)(v) of Rs. 5,39,686/- under the head income from business in the intimation issued u/s 143(1) without appreciating the fact that such addition does not constitute as prima facie adjustment under section 143(1)(a) and hence Ld. AO acted without jurisdiction and made disallowance by assuming incorrect jurisdiction in this regard.

6. The Id. Senior DR submitted that the issue is no more res integra after judgement of Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC) and order of ITAT Pune Bench in the case of Cematile Industries vs ITO TS-933-ITAT-2022 (Pune) and the DCIT, CPC is very well empowered to make adjustment u/s. 143(1) (a) of the Act on this count.

7. On careful consideration of above submissions, we note that Central Processing Centre ("CPC") has made additions of Rs. 5,39,686/- to the returned income of the assessee on account of late deposit of employees contribution to Provident Fund/ESIC deferred while processing the return of income. In this regard, the action of the Revenue in making disallowance towards late deposit of employees contribution to Provident Fund/ESIC was supported by the judgment rendered in the case of Checkmate Services (P.) Ltd. vs CIT (2022) 143 taxmann.com 178 (SC). Ld. Sr. DR for the Revenue thus submitted that even for Assessment Years prior to Assessment Year 2021-22, belated deposit of employees contribution held in Trust by the employee Assessee are to be reckoned as taxable income of the assessee u/s. 2(24)(x) r.w. Section 43B of the Act and the deduction u/s 36(i)(va) of the Act would not be permissible thereon in case of belated payments. Ld. Sr.DR for the Revenue further contended that the delayed deposit of employees contribution indicated in the Audit Report is sufficient for adjustment under section 143(1) of the Act, as held by the Pune Bench of the Tribunal in the case of Cematile Industries vs ITO TS-933-ITAT-2022 (Pune).

8. The issue towards taxability of belated employees contribution to Provident Fund/ESIC is no longer res integra in the light of the judgement of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs CIT (supra). The co-ordinate Bench of the Tribunal in Cematile Industries vs ITO (supra) had expressed a view that such adjustment/disallowance is also permissible in the proceedings carried out u/s 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in Savleen Kaur & Others vs ITO in ITA No.2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023 and in BT Data and Surveying Services India Pvt. Ltd. vs. ITO in ITA No.1658/Del/2021 for Asy 2018-19 vide order dated 07.02.2023 has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-

ordinate Benches, we do not see any merit in the appeal of the assessee. We thus, do not see any warrant to any reason to interfere with the order of Ld.CIT(A).

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 16.06.2023.

Sd/-  
(M.BALAGANESH)  
ACCOUNTANT MEMBER  
Dated: 16<sup>th</sup> June, 2023.

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

NV/-

Copy forwarded to:

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

// By Order //

Asstt. Registrar, ITAT, New Delhi