

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.345 & 346/Bang/2023
Assessment Year: 2018-19 & 2019-20

Prabhakar Somappa Pujari, Industrial Caterers, Krishna Kripa Complex, Behind KSRTC Bus Stand, Udupi, Adi-udupi B.O, Udupi, Karnataka, India - 576 101.  <b>PAN No. - ABLPP 7185 R</b>	<b>Vs.</b>	The Deputy Commissioner of Income-tax, Circle-1, Udupi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sanketh S Nayak, CA
<b>Respondent by</b>	:	Shri Pavan Kumar, Addl. CIT (DR)

<b>Date of Hearing</b>	:	15.06.2023
<b>Date of Pronouncement</b>	:	22 .06.2023

**ORDER**

**PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:**

These appeal filed by the assessee are against the order passed by the NFC, New Delhi vide order dated 28/02/2023 u/s 250 of the Income-tax. Since the issue involved in both the appeals are identical, therefore, for the sake of brevity, we are taking first ITA No.345/Bang/2023 for the assessment year 2018-19 and the

decision on this appeal shall mutatis-mutandis apply in ITA No.346/Bang/2023 for the assessment year 2019-20.

2. The sole issue involved in this appeal is regarding disallowance of PF/ESI made by CPC, Bangalore and confirmed by the CIT(A).

3. The brief facts of the case are that the assessee filed income-tax return on 23/10/2018 declaring gross total income of Rs.48,76,000/- and deduction of claim under Chapter VI-A of Rs.1,65,000/-, resultantly the total income after deduction is Rs.47,11,000/-. The return was processed u/s 143(1) of the Act by the CPC vide order dated 13/12/2019, in which the total adjustment has been made of Rs.21,25,110/- u/s 36(1)(va) r.w.s 2(24)(x) of the Act as contribution to PF/ESI funds were paid by the assessee after the due date of payments as prescribed under the said statute even though the same were paid before the due date of filing of return of income.

4. Aggrieved from the above order u/s 143(1) of the Act, the assessee filed appeal before the CIT(A) and submitted written synopsis. The ld.CIT(A) confirmed the order of the CPC by relying on the certain judgments.

5. Aggrieved from the order of the CIT(A), the assessee filed appeal before the ITAT.

6. The Id.AR submitted that while framing the Tax Audit Report the Tax Auditor has wrongly mentioned under col. 20(b) in form No.3CD,the actual date of payment and due date of payment. He further submitted that suppose the salary for the month of April is paid in the following month, then the actual due date of payment of PF/ESI as per respective act will be 15<sup>th</sup> June. The details of the employee's contribution and employer's contribution which is as under:-

## ANNEXURE-1

Details of PF Payment for the year 2017-18						
Month	Employees Contribution	Employers Contribution	Total	Mode	Cleared on	Amount disallowed
April	3,17,805	3,28,827	6,46,632	Neft	17.05.2017	3,17,805
May	3,27,719	3,39,723	6,67,442	Neft	27.06.2017	3,27,719
June	3,11,013	3,32,312	6,43,325	Neft	15.07.2017	
July	3,20,490	3,41,716	6,62,206	Neft	15.08.2017	
August	3,23,210	3,43,916	6,67,126	Neft	16.09.2017	3,23,210
September	3,09,247	3,29,218	6,38,465	Neft	14.10.2017	
October	2,79,134	2,96,163	5,75,297	Neft	16.11.2017	2,79,134
November	2,97,865	3,16,667	6,14,532	Neft	14.12.2017	
December	2,08,118	3,64,697	5,72,815	Neft	15.01.2018	
January	2,80,663	3,41,335	6,21,998	Neft	15.02.2018	
February	2,64,718	3,38,779	6,03,497	Neft	16.03.2018	2,64,718
March	3,22,442	3,24,819	6,47,261	Neft	17.04.2018	3,22,442
<b>Total</b>	<b>35,62,424</b>	<b>39,98,172</b>	<b>75,60,596</b>			<b>18,35,028</b>

Employee' State Insurance for the FY 2017-18						
Month	Employees Contribution	Employer Contribution	Total	Mode	Date of Payment	Amount disallowed
April	34,256	92,734	1,26,990	Neft	23.05.2017	34,256
May	35,986	97,358	1,33,344	Neft	21.06.2017	Due date extended
June	35,020	94,720	1,29,740	Neft	21.07.2017	35,020
July	35,785	96,785	1,32,570	Neft	15.08.2017	
August	34,279	92,704	1,26,983	Neft	18.09.2017	34,279
September	34,931	94,473	1,29,404	Neft	14.10.2017	
October	30,727	83,102	1,13,829	Neft	17.11.2017	30,727
November	33,313	90,114	1,23,427	Neft	20.12.2017	33,313
December	21,403	92,082	1,13,485	Neft	20.01.2018	21,403
January	33,247	89,913	1,23,160	Neft	24.02.2018	33,247
February	33,044	89,453	1,22,497	Neft	19.03.2018	33,044
March	34,789	94,114	1,28,903	Neft	16.04.2018	34,789
<b>Total</b>	<b>3,96,780</b>	<b>11,07,552</b>	<b>15,04,332</b>			<b>2,90,078</b>

7. Therefore, he requested that the matter may be sent back to the file of AO for verification of the actual date of payment of salary along with the payment of employees and employer's contribution to the respective funds. The Id.AR relied on the decision of ITAT and judgment of the Hon'ble Calcutta High Court, which are as under:-

- 1) M/s MTR Maiya's in ITA No.95/Bang/2023 vide order dated 27.04.2023
- 2) Soliflex Packaging Pvt. Ltd., in ITA No.1056/Bang/2022 vide order dated 20.12.2022
- 3) Kanoi Paper & Industries Ltd., [2022] 75 TTJ 448 (Cal)

8. On the other hand, the Id.DR relied on the order of the lower authorities and he also submitted that the Hon'ble Supreme Court of India has decided this issue in favour of the revenue in the case of Checkmate Services Pvt. Ltd. Vs. CIT(1), [2022] 143 taxmann.com 178 (SC), therefore, the CPC has rightly disallowed the detailed payment made by the assessee.

9. After hearing the rival contentions and perusing the entire record and also after going through the orders of the authorities below, we note that the CPC has disallowed the statutory dues u/s 36(1)(va) r.w.s 2(24)(x) of the Act of Rs.21,25,110/-. On going through the Annexure - 1 submitted by the assessee, the details of employees and employers contribution which is a month-wise details as per the above chart and the PF payment in the year

2017-18 of sum of Rs.18,35,028/- has been disallowed and towards employees state insurance financial year 2017-18 a sum of Rs.2,90,078/- has been disallowed. We find substance on the submission of the ld.AR that the salary payment for the month of April has been made in the following month, therefore, due date of payment shall be counted from the end of the particular month, in which the salary has been paid and our this view is supported by the decision relied by the ld.AR cited supra. We also gone through the judgment cited by the ld.AR in the case of M/s MTR Maiya's in which, the coordinate bench has relied on the decision of Hon'ble Calcutta High Court and in which issue has been settled in favour of the assessee. For the sake of convenience, we are reproducing the finding of the above judgment:-

*"11. Heard both the sides, perused the entire material on record and the orders of the lower authorities. As far as the contention of the assessee that no disallowance can be made u/s. 143(1)(a) of the Act towards employees contribution to EPF and ESI is concerned, we find that this issue is settled by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. DCIT reported in (2022) 138 taxmann.com 571 wherein it was held as under:-*

*"7. The scope of an 'intimation' under section 143(1)(a) of the Act, extends to the making of adjustments based upon errors apparent from the return of income and patent from the record, Thus to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employs the term 'entry' would, in my view, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of section 143(1)(a) of the Act."*

*12. In view of the above judgment, the contention of the assessee that no disallowance could be made u/s. 143(1)(a) of the Act towards employees contribution to EPF and ESI is rejected.*

*13. It is submitted by the ld. AR that there was inadvertent error in Form 3CD in mentioning the correct dates and the relevant details to the extent of employees contribution to the extent of Rs.15,55,547 (14,97,770 + 57,777) have been already been reproduced in para 4 of this order. The assessee has produced copy of challans towards contribution to EPF and*

*ESI. Since these documents have not been verified by the lower authorities, therefore, for the limited purpose of verification, this issue is remitted back to the AO for verification of the proof of payments as per section 36(1)(va) of the Act. The assessee is directed to produce the necessary documents in support of its claim. If the AO finds otherwise the addition shall be sustained.*

*14. In respect of disallowance of Rs. 1,29,106/- for the month of August 2017 & Sept. 2017 the assessee submitted that these payments were made in the following months, therefore the date of payment of salary should be considered the month in which the salary has been paid because the employee cannot contribute in the EPF/ESI without the payments made by the employer. He also submitted the copy of ledger account. The ld. AR also relied on the decision of Calcutta Bench of the Tribunal in the case of Kanoi Paper & Industries Ltd. [2002] 75 TTJ 48 (Cal) wherein it is held as under:-*

*“6. Clause 38 of the Employees’ Provident Fund Scheme, 1952, fixes the time-limit for making payment in respect of contribution to the provident fund to be 15 days from the close of the month concerned. However, the issue here is whether the "month" should be considered to be the month which the wages relates or the month in which the actual disbursement of the wages is made, we are of the considered opinion that the expression "month" should mean here the month during which the wages/salary is actually disbursed irrespective of month to which the same relates. Thus, the scheme of the Government in this regard is that once a deduction is made in respect of the employees’ contribution to the provident fund from the salary/wages of the employee or the employer also makes his contribution, factually at the time of disbursement of the salary the payment in respect of such contribution should be made forthwith. if for some reason or other the payment of salary for a particular month be held up for considerable period of time it cannot be said that the employer would be liable to make payments in respect of the "employer’s" as well as "employees" contribution in respect of wages for such period within a period of 15 days from the close of the month to which the wages relates. On the other hand, in our view, most appropriate interpretation would be that the employer would be at liberty to make payment of the contribution concerned within 15 days (subject however to the further grace period) from the end of the month during which the disbursement of the salary is actually made and the contribution of the provident fund are, thus, generated, inasmuch as, the provision relating to the disallowance of such contribution on account of delay is rather an artificial provision. In our view, a liberal approach has got to be made to this issue. Ultimately, therefore, we reverse the order of the lower authorities and direct the Assessing Officer to examine whether the payments of contribution in the present case were made within 15 days from the close of the respective months during which the disbursement of the salary/wages were actually made. The Assessing Officer should recompute the amount disallowable, if any, on the above basis and take appropriate action accordingly.”*

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*15. In view of the above, we remit this issue to the AO with a direction to examine and decide the issue in the light of the above judgment. Accordingly this issue is allowed for statistical purpose.*

*16. As far as the employees contribution to EPF & ESI the details of which are extracted in para 6 of this order to the extent of Rs.40,588/- is concerned, the submission of the assessee is that these remittances were within the due date for filing return u/s. 139(1) of the Act, though they were belated payments under the respective Acts and hence no disallowance is called for. This issue is settled by the Hon'ble Supreme Court judgment in Checkmate Services (P.) Ltd. Vs CIT-1, [2022] 143 taxmann.com 178 (SC) wherein it is held that that Section 43B(b) does not cover employees' contributions to PF, ESI etc., deducted by employer from salaries of employees and that employees contribution has to be deposited within the due date u/s 36(1)(va) i.e. due dates under the relevant employee welfare legislation like PF Act, ESI Act etc. failing which the same would be treated as income in the hands of the employer u/s.2(24)(x). Respectfully following this judgment, we sustain the disallowance to the extent of Rs. 40,588/- towards belated remittances towards employees contribution to EPF & ESI under the respective Acts.*

*17. In the result, the appeal by the assessee is partly allowed for statistical purposes.*

10. Respectfully following the above judgment, we send back the matter to the file of AO for the verification of the actual date of payment of salary with relevant documents in the light of the decision of the Hon'ble Calcutta High Court. The assessee is directed to produce necessary documents in support of its claim and the AO is directed to give reasonable opportunity of being heard and decide the issue as per law keeping in mind to the judgment relied by the ld. DR.

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

**ITA No.346/Bang/2023**

12. The issue decided in above appeal is identical and for the sake of brevity, we are reproducing the details of the employees and employer's contribution placed by the assessee in the appeal set in Form of Annexure -1, which is as under:-

**ANNEXURE-1**

Details of PF Payment for the year 2018-19						
Month	Employees Contribution	Employers Contribution	Total	Mode	Cleared on	Amount disallowed
April	3,11,177	3,35,611	6,46,788	Neft	15.05.2018	-
May	3,20,871	3,45,376	6,66,247	Neft	22.06.2018	3,20,871
June	3,25,954	3,59,094	6,85,048	Neft	19.07.2018	3,25,954
July	3,41,953	3,57,209	6,99,162	Neft	22.08.2018	3,41,953
August	3,22,300	3,37,569	6,59,869	Neft	21.09.2018	3,22,300
September	3,48,997	3,64,267	7,13,264	Neft	19.10.2018	3,48,997
October	3,76,816	3,92,139	7,68,955	Neft	17.11.2018	3,76,816
November	3,88,262	4,08,488	7,96,750	Neft	24.12.2018	3,88,262
December	4,07,084	4,43,643	8,50,727	Neft	23.01.2019	4,07,084
January	4,04,126	4,10,147	8,14,273	Neft	16.02.2019	4,04,126
February	4,12,762	4,53,643	8,66,405	Neft	21.03.2019	4,12,762
March	4,21,750	4,43,603	8,65,353	Neft	16.04.2019	4,21,750
<b>Total</b>	<b>43,82,052</b>	<b>46,50,789</b>	<b>90,32,841</b>			<b>40,70,875</b>

Employee' State Insurance for the FY 2018-19						
Month	Employee Contribution	Employer Contribution	Total	Mode	Payment Date	Amount disallowed
Apr-18	40,462	1,09,510	1,49,972	Neft	16.05.2018	40,462
May-18	35,725	96,927	1,32,652	Neft	22.06.2018	35,725
Jun-18	37,463	1,01,484	1,38,947	Neft	20.07.2018	37,463
Jul-18	43,280	1,17,179	1,60,459	Neft	20.08.2018	43,280
Aug-18	48,176	1,30,395	1,78,571	Neft	21.09.2018	48,176
Sep-18	53,399	1,44,549	1,97,948	Neft	19.10.2018	53,399
Oct-18	54,831	1,48,382	2,03,213	Neft	15.11.2018	-
Nov-18	56,065	1,51,767	2,07,832	Neft	24.12.2018	56,065
Dec-18	56,986	1,54,322	2,11,308	Neft	23.01.2019	56,986
Jan-19	56,809	1,54,157	2,10,966	Neft	22.03.2019	56,809
Feb-19	56,979	1,54,263	2,11,242	Neft	21.03.2019	56,979
Mar-19	52,423	1,42,214	1,94,637	Neft	16.04.2019	52,423
<b>Total</b>	<b>5,92,598</b>	<b>16,05,149</b>	<b>21,97,747</b>			<b>5,37,767</b>

13. Since the issue in this appeal is identical to the above appeal, therefore, the decision in above appeal i.e in ITA No.345/Bang/2023 shall mutatis-mutandis apply in the this appeal i.e in ITA No.346/Bang/2023. Accordingly, this appeal is also allowed for statistical purpose in the above terms.

14. In the result, both the appeals of the assessee are allowed for statistical purpose. A copy of the common order passed shall be kept in the respective case files.

Order pronounced in the open court on 22<sup>nd</sup> June, 2023

**Sd/-**

**(George George K)  
Judicial Member**

**Sd/-**

**(Laxmi Prasad Sahu)  
Accountant Member**

Bangalore,  
Dated 22<sup>nd</sup> June, 2023

Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar/ITAT, Bangalore**