

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "B" KOLKATA**  
**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**  
**AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 473/KOL/2023**  
**Assessment Year: 2020-21**

The Barnagore Jute Factory PLC C/o. Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2 <sup>nd</sup> Floor, Kolkata-700069. <b>PAN: AABCT 0134 C</b> (Appellant)	Vs.	DCIT, Circle-1(1), Kolkata (Respondent)
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**Present for:**

Appellant by : Shri Siddarth Agarwal, Advocate  
Respondent by : Shri P.P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 27.06.2023

Date of Pronouncement : 27.06.2023

**ORDER**

**PER SONJOY SARMA, JM:**

The present appeal has been preferred by the assessee against the order dated 15.02.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, we find that there is a delay of 30 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. The sole issue involved in this appeals is relating to the disallowance made by the Assessing Officer/Central Processing Centre (CPC) u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on account of delayed deposit of employees' contribution to PF/ESI i.e. after the due date as provided under the respective welfare enactments.

4. At the time of hearing, ld. AR submits that the intimation dated 24.12.202 passed under section 143(1) of the Act, the Assistant Commissioner of Income Tax (CPC), Bangalore erred in making disallowance of the sum of Rs. 1,59,33,906/- being employees contribution to PF and ESI, under section 36(1)(va) of the Act even though the entire amount of the said employees contribution was paid before the due date of filing of return of total income under section 139(1) of the Income Tax Act, 1961. In the impugned order dated 24.12.2021 the said disallowance has been made without appreciating that the adjustment of the said disallowance made in the intimation was itself illegal. On the other hand, ld. DR objected to such prayer made by the ld. AR.

5. We after hearing both the parties and perused the material available on record, we find that the instant issue raised by the assessee has come to rest by the recent verdict of the Hon'ble Supreme Court in Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022 wherein it has been held that deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed even though deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act,1961.

6. The Hon'ble Supreme Court in the case of 'Checkmate Services Pvt. Ltd vs. CIT' (supra) has held that by virtue of section 2(24)(x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2(24)(x), unless the condition stipulated 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. The Hon'ble Supreme Court held that 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 employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

7. In view of above discussion, we do not find any merit of the appeal of the assessee and the same is hereby dismissed.

8. In the result, the appeal of the assessee stands dismissed.

**Order pronounced in the open court on 27.06.2023**

**Sd/-**

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated: 27.06.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: The Barnagore Jute Factory PLC.
2. The Respondent: DCIT, Circle-1(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata