

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHE 'H' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 1847 & 1848/Del/2021  
Assessment Years: 2018-19 & 2019-20**

Satpal Kaswan,  
C/o CA Ummed Kuntal CSC-5,  
A-1 Block, Shopping Centre,  
Safdarjung Enclave, New Delhi.

**PAN: AZFPK0679R**

(Appellant)

Versus Income-tax Officer,  
Ward 4(1) Gurgaon.

(Respondent)

Assessee by : Sh. Ummed Kuntal, CA  
Revenue by : Sh. B.K. Singh, Sr. DR

Date of hearing : 28.06.2023  
Date of pronouncement: 28.06.2023

**ORDER**

**PER SAKTIJIT DEY, V.P.:**

Aforesaid appeals by the assessee arise out of two separate orders, both, dated 02.06.2021 passed by National Faceless Appeal Centre (NFAC), Delhi for the assessment years 2018-19 and 2019-20.

2. We have considered rival submissions and perused materials on record. The solitary dispute in these appeals relates to disallowance of deduction claimed in respect of delayed payment of employees' contribution under the Provident Fund (PF) Act and Employees State Insurance (ESI) Act. While processing the returns of income filed by the assessee for the impugned assessment years, the Central Processing Centre (CPC), having found that employees' contribution to PF and ESI were not paid within the due dates prescribed under the PF and ESI Acts, disallowed the deductions claimed by the assessee in respect thereof. The disallowance so made was confirmed by the first appellate authority.

3. Before us, it is the say of the assessee that due to misstatement/misreporting of facts, the disallowance has been made under section 36(1)(va) of the Act. However, on a reading of the order passed by the first appellate authority, it is observed that the assessee had taken a plea that due to scarcity of fund, employees' contribution to PF and ESI could not be deposited within the due date prescribed under the relevant Acts. Be that as it may, considering the specific contention of the assessee before us that the disallowance

has been made due to misstatement/misreporting of facts relating to payment of employees' contribution to PF and ESI, we are inclined to restore the issue to the Assessing Officer for factually verifying assessee's claim. It is open to the assessee to furnish all necessary documentary evidences to establish its claim that employees' contribution to PF and ESI were deposited within the due date prescribed under the PF and ESI Acts. Needless to mention, the Assessing Officer shall decide the issue after considering the evidences filed by the assessee and applying the ratio laid down by Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT, 448 ITR 518 (SC). Before deciding the issue, the assessee must be provided a reasonable opportunity of being heard. Grounds are allowed for statistical purposes.

4. In the result, appeals are allowed for statistical purposes.

Order pronounced in the open court on 28/06/2023.

Sd/-

**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 28.06.2023

\*aks/-