

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.76/Asr/2023  
Assessment Year: 2020-21**

Inderjit Bajaj, 223, New Jawahar Nagar, Jalandhar. [PAN:-AAOPB0844K] <b>(Appellant)</b>	Vs.	DCIT/ACIT, Circle-1, Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Ashwani Mittal & Harish Puri, CAs.
<b>Respondent by</b>	Ms. Priyanka Singla, Sr. DR

<b>Date of Hearing</b>	26.06.2023
<b>Date of Pronouncement</b>	11.07.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’],order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2020-21. The impugned order was emanated from the order of the CPC, u/s 143(1) of the Act.

2. The assessee has taken the following grounds:

1. *Whether the learned CIT(A) was justified in upholding the action of the Asstt. Director of Income Tax, CPC, Bangaluru in making disallowance of employees contribution to ESI and Provident Fund of Rs. 46,11,732/- based on the statement made in the tax audit report while processing the return u/s 143(1) of the Income Tax Act, 1961.*

2. *That Ld. CIT(A) was not justified in not adjudicating Ground No. 1 and Ground No. 3 relating to disallowance of Rs. 21,84,081/- u/s 43B of Income Tax Act, 1961 raised in Form No. 35 and ought to have deleted the addition of Rs. 21,84,081/- made by Asstt. Director of Income Tax, CPC, Bangaluru while processing the return u/s 143(1) of the Income Tax Act, 1961.*

3. *That on the facts and circumstances of the case and in law, additions of Rs. 21,84,081/- u/s 43B has been made by CPC, Bangaluru without providing opportunity to the Assessee and therefore, the addition made is illegal, unjustified, arbitrary and against the facts of the case. Therefore, it is prayed that relief may kindly be granted by deleting the additions of Rs. 21,84,081/- made while processing the return of income.*

4. *That addition of Rs. 21,84,081/- on account of ESI/PF/LWF (i.e. Rs. 71,46,129/-minus Rs. 49,62,048/-) u/s 43B made on the basis of Original Tax Audit Report in Form 3CD is bad in law because addition comes to Rs. 49,62,048/- based of Revised Tax Audit Report in Form 3CD which has already been made in the computation of income while furnishing the return of income and therefore, addition of Rs. 21,84,081 /- u/s 43B is not sustainable in law and therefore, may kindly be deleted.*

5. *That the appellant craves leave to amend, alter or add to the above grounds of appeal, before the appeal is heard or disposed off.”*

3. The assessee has also taken the additional ground:

*“In view of the above, Appellant assessee urges the following Ground of Appeal as Additional Ground of Appeal in addition to the Additional Ground of Appeal raised in Application dated 25.05.2023:-*

*“That contribution to PF and ESI in respect of employees contribution would be a business expenditure which is allowable 37(1) of the Income Tax Act, 1961 in the year in which the same is actually paid.”*

4. Brief fact of the case is that the assessee's return was processed u/s 143(1) by disallowing the claim u/s 36(1)(va) amount of Rs.46,17,732/- and Rs.21,84,081/- u/s 43B of the Act, due to delayed payment in employee contribution to ESI and provident fund. The grievance of the assessee was that the without giving a reasonable opportunity to the assessee. The addition u/s 36(1)(va) and u/s 43B was confirmed. The assessee filed the tax audit report with Form 3CD. The revenue has collected the data from the tax audit report and computed the addition. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) relied on the order of the Hon'ble Supreme Court in the case of **CheckmateServices (P.) Ltd.v.Commissioner of Income-tax-1 [2022] 143 taxmann.com 178 (SC)** and disallowed the assessee's ground. Being aggrieved, the assessee filed an appeal before us.

5. The ld. AR placed the written submission which are kept in the record. The ld. AR vehemently argued and first pointed out that the reasonable opportunity was denied for the assessee for disallowance of the deduction claimed u/s 36(1)(va) and 43B which are violation of the natural justice. The ld. AR further claimed that the said amount can be allowed u/s 37(1) of the Act. Accordingly, the argument was placed before the bench related to addition of additional evidence. The ld. AR

relied on the Hon'ble Jurisdictional High Court of in the case of Abhishek Industries Ltd. Vs.CIT&Anr. (2007) 290 ITR 655 (P & H);

*“5. As to whether additional ground of appeal can be raised by an assessee before the appellate authority during the course of hearing of the appeal or not, is no more res Integra. In Jute Corporaion of India Ltd. vs. CIT &Anr. (1991) 191 ITR 688 (SC) and National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC), Hon'ble Supreme Court has upheld the right of assessee to raise additional ground of appeal.”*

6. The ld. DR vehemently argued and fully relied on the order of the appellate authority and respectfully relied on the order of **CheckmateServices (P.) Ltd,** (supra)

7. We heard the rival submission and relied on the documents available in the record. The issue is already well settled by the same bench of ITAT Amritsar Bench in the case of **Navodaya Times Private Ltd vs DCIT-Cir-1, Jalandhar, I.T.A. No.192/Asr/2022, date of pronouncement-30/01/2023.** The ld. AO has power to make an addition by considering the data from tax audit report u/s 143(1) of the Act. But related to additional ground the issue was first raised before the bench. The assessee prayed to accept the said expenses U/s 37 of the Act. The Bench had already dismissed the expenses U/s 36(1)(va) of the Act, related

delayed payment of employees' contribution by respectfully considering the order of **CheckmateServices (P.) Ltd**, (supra). But the assessee in submission has raised the additional ground before the bench that to allow the said expenses in other head. The Id. DR had not made any strong objection against the non-acceptance of additional ground. We direct to send back the issue to the Id. CIT(A) for further adjudication *de novo* only on basis of the additional ground. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceeding.

7.1 Considering the above fact ground nos. 1 to 4 are dismissed.

8. Ground no. 5 is general in nature.

9. The additional ground is allowed for statistical purposes.

10. In the result, the appeal of the assessee bearing **ITA No. 190/Asr/2022** is allowed partly.

**Order pronounced in the open court on 11.07.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order