

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JM &

SHRI GAGAN GOYAL, AM

I.T.A. No. 2049/Mum/2021  
(Assessment Year: 2019-20)

|  |                     |   |
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| Shri Allwyn Joseph Sequeira,<br>401, 4 <sup>th</sup> floor, Fair Field Apartment,<br>Malad (West)<br>Mumbai-400 064. | <b>बनाम/</b><br>Vs. | ACIT Cir-4(3)(1),<br>Room No. 349, 3 <sup>rd</sup> Floor,<br>G-Block, Kautilya Bhavan, Bandra<br>Kurla Complex, Bandra (East),<br>Mumbai-400 051. |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AAVPS3288D   |                     |   |
| (अपीलार्थी/Appellant)  | :                   | (प्रत्यर्थी / Respondent)   |

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|---|---|--------------------------------------|
| अपीलार्थी की ओर से / <b>Appellant by</b>  | : | None                                 |
| प्रत्यर्थी की ओर से/ <b>Respondent by</b> | : | Shri Ashok Kumar Ambastha,<br>Sr. DR |

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| सुनवाई की तारीख /<br><b>Date of Hearing</b>      | : | 07/07/2023 |
| घोषणा की तारीख /<br><b>Date of Pronouncement</b> | : | 12/07/2023 |

**आदेश / ORDER**

**Per Gagan Goyal, Accountant Member:**

This appeal by the assessee was adjudicated on 30.08.2022 however same has been recalled by way of the order dated 10.07.2023 in Miscellaneous Application No. 306/Mum/2023 and therefore, both the parties were again heard on the ground raised in the appeal. The relevant grounds of appeal are reproduced as under:

*“1. Under the facts and in law, Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (CIT(A), NFAC) erred in confirming disallowance of Rs. 15,88,383/- under section 36(1)(va) of Income Tax Act, 1961 (the Act).*

*1.1. Under the facts and in law CIT(A), NFAC erred in confirming the addition of Rs. 15,86,383/- u/s 36(1)(va) of the Act, being any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date of respective laws.*

*1.2 Under the facts and in law, CIT(A), NFAC failed to appreciate the fact that the said amount of Rs 15,86,383/- was deposited in their respective fund before the due date of filing of return of Income.*

*1.3. Under the facts and in circumstances, deduction in respect of any sum received from employees for contribution towards PF, ESIC or any other welfare funds for employees is allowable under section 43B of the Act, if deposited before the due date of filing of return of income, as decided by the jurisdictional High Court (2015) 53 taxmann.com 141 (Bombay).*

*1.4. Under the facts and in law, CIT(A), NFAC erred in stating that the amendment brought by Finance Act. 2021 in section 36(1)(va) of the Act and section 438 of the Act are retrospective in nature as these provisions create liability for the appellant and therefore cannot be retrospective unless specified.*

*2. The order under appeal is not only bad in law but also against the principle of natural justice and equity.”*

2. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The issue in dispute involved in the appeal is in respect of disallowance of employee’s contribution to PF/ESI paid after the due date under the relevant enactment. The Ld. Computerized Processing Centre (CPC) made adjustment for the said disallowance in the

order u/s 143(1) of the Act on the basis of the reporting by the assessee in the tax audit report filed along with the return of income.

3. Before us, it was claimed by the assessee that since disallowance of employee's contribution to PF/ESI was earlier being allowed by the Hon'ble Jurisdictional High Court and therefore, disallowance was a debatable nature and it should not be adjustment u/s 143(1) of the Act.

4 We find that the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra) has held that employees contribution to PF/ESI paid after the due date under the relevant enactment is not eligible for deduction u/s 36(1)(va) of the Act. This interpretation of the provision of the law by the Hon'ble Supreme Court is effective, since its inception; therefore, issue is no longer debatable. In terms of section 143(1) (a) (ii) of the Act, any incorrect claim which is apparent from any information the return of income, is liable to be adjusted u/s 143(1) of the Act. Since in the case, the claim of employee's contribution paid to PF/ESI after due date under the relevant Act is apparent from the information in tax audit report filed alongwith the return of income and thus, the claim is incorrect. The Ld. CIT (A) is correct in upholding the order of the Ld. CPC in making the said adjustment u/s 143(1) of the Act. Accordingly, we uphold the same. The grounds of appeal of the assessee are accordingly dismissed.

5. **In the result, the appeal filed by the assessee is dismissed in above terms.**

*Order pronounced in the open court on 12.07.2023.*

Sd/-  
**(Amit Shukla)**  
**(Judicial Member)**

Sd/-  
**(Gagan Goyal)**  
**Accountant Member**

Mumbai; दिनांक Dated: 12.07.2023

Sr. PS Dhananjay

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त / CIT - concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.**

**Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**