

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.226 & 227/Viz/2022
(निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-20)

Asst. Commissioner of Income Tax, Circle-3(1),
Visakhapatnam.
(अपीलार्थी/ Appellant)

Vs. Sri Guntubolu Uma Sai Prasad,
Visakhapatnam.
PAN: AGFPG 9845 A
(प्रत्यर्थी/ Respondent)

C.O. No. 15 & 16/Viz/2023
(आयकर अपील सं./ I.T.A. No. 226 & 227/Viz/2022)
(निर्धारण वर्ष / Assessment Years: 2018-19 & 2019-20)

Sri Guntubolu Uma Sai Prasad,
Visakhapatnam.
PAN: AGFPG 9845 A
(Cross Objector)

Vs. Asst. Commissioner of Income Tax, Circle-3(1),
Visakhapatnam.
(Appellant in appeal)

आयकर अपील सं./ I.T.A. No. 97/Viz/2023
(निर्धारण वर्ष / Assessment Year :2020-21)

Guntubolu Uma Sai Prasad,
Visakhapatnam.
PAN: AGFPG 9845 A
(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by : Sri I. Kama Sastry, AR

प्रत्यर्थी की ओर से / Respondent by : Sri ON Hari Prasada Rao,
Sr. AR

सुनवाई की तारीख / Date of Hearing : 21/06/2023
घोषणा की तारीख/Date of Pronouncement : 17/07/2023

ORDER

PER DUVVURU RL REDDY, Judicial Member :

Out of the captioned appeals, ITA No. 226 & 227/Viz/2022 (AY: 2018-19 and 2019-20) are filed by the Revenue; CO No. 15 & 16/Viz/2023 (AY: 2018-19 and 2019-20) and ITA No. 97/Viz/2023 (AY: 2020-21) are filed by the assessee. Since the issues raised in Revenue's appeals, Cross Objections of the assessee as well as the assessee's appeal are inter-connected, for the sake of convenience, all these appeals are clubbed, heard together and disposed off in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

**ITA Nos.226 & 227/Viz/2022
(AY: 2018-19 & 2019-20)
Revenue's Appeals**

2. Both these appeals are filed by the Revenue against the orders of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1045313667(1), dated 8/9/2022 &

ITBA/NFAC/S/250/2022-23/1045313683(1), dated 8/9/2022 arising out of the orders passed U/s. 143(1) of the Income Tax Act, 1961 [the Act] for the AYs 2018-19 and 2019-20.

3. At the outset, we noted from the appeal record that there is a delay of 11 days in filing the appeals before the Tribunal. In this regard, the Ld. DR drawn our attention to the Affidavit filed by the Asst. Commissioner of Income Tax, Circle-3(1), Visakhapatnam wherein the Ld. ACIT explained the reasons for belated filing of the appeals and sought for condonation of delay. The relevant portion from the Affidavit filed by the Ld. ACIT is extracted herein below for reference:

"1.....

2.....

3....

4. *I submit that copy of the order of the CIT(A), NFAC, Delhi was received in the office of the Pr. Commissioner of Income Tax-1, Visakhapatnam herein on 8/9/2022. The last date for filing of the appeal was 6/11/2022. However, the above appeal was filed only on 18/11/2022. Thus, there is a delay of 12 days in filing the above appeal.*

5. *I submit that the authorization dated 1/11/2022 issued by the Pr. Commissioner of Income Tax-1, Visakhapatnam was received in this office on 3/11/2022. As the due date falls on Sunday ie 6/11/2022 and subsequently, the undersigned was deputed for invigilation duty of Departmental Examination followed by Departmental Training on 15/11/2022 and 16/11/2022, thus there was delay of 12 days in filing the appeal. It is submitted that there are good grounds for condonation in the*

appeal. It is therefore just and necessary to condone the delay in filing the above appeal.

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4. On perusal of the contents of the Affidavit filed by the Ld. ACIT explaining the reasons for delay in filing the appeals before the Tribunal, we are of the considered view that there is a sufficient and reasonable cause for not filing the appeals within the stipulated time as prescribed. Hence, in our view these are the fit cases to condone the delay of 11 days in filing the appeals before the Tribunal and we proceed to adjudicate the appeals on merits.

5. Since the Revenue has raised the identical grounds, we shall take up ITA No. 226/Viz/2022 as a lead appeal. The Revenue has raised the following grounds in its appeal for the AY 2018-19.

1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in deleting the addition of Rs. 2,34,33,370/- for the AY 2018-19 which is not allowable U/s. 36(1)(va) of the Act.*
3. *The Ld. CIT(A) erred in observing the Board's Circular No. 22/2015 and 17/12/2015 wherein the claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Act does not apply.*
4. *The Ld. CIT(A) erred in considering the amendment had been brought in the recent Finance Act that the delayed payment cannot be allowed U/s. 43B of the Act.*
5. *The Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. Commissioner of Income Tax in Civil Appeal No. 2833 of 2016 has decided the issue in favour of the Department, wherein it was held that it is an essential condition for the deduction that such amounts are*

deposited on or before the due date and that the non-obstante clause under section 43B or anything contained in that provisions would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.

6. *For these and other grounds that may be urged at the time of appeal hearing, it is prayed that addition made by the AO be restored."*

6. Brief facts of the case are that the assessee is an individual engaged in the business of supply of man power services, had filed return of income on 11/10/2018 declaring a total income of Rs. 1,33,37,370/-. The return was processed U/s. 143(1) of the Act vide order dated 8/2/2020 wherein the Ld. DCIT, CPC has made addition of Rs. 2,34,33,370 [Rs. 1,86,01,880 towards EPF and Rs. 48,31,490/- towards ESI] invoking the provisions of section 36(1)(va) of the Act. On being aggrieved by the order of the Ld. DCIT, CPC, the assessee preferred an appeal before the Ld. CIT (A)-NFAC.

7. Before the Ld. CIT(A) the assessee contended that the Ld. AO erred in passing the order U/s. 143(1) of the Act as it is contrary to the provisions of law and facts of the case. The assessee also contended before the Ld.CIT(A) that invoking of provisions of section 36(1)(va) r.w.s 2(24)(x) of the Act and thereby making an addition of Rs. 2,34,33,370/- is against law since the provisions of section 43B are also not applicable as the

payments are made before the due date of filing of return. The assessee further contended that the Ld. AO also failed to appreciate and apply the decision of the ITAT in the case of the assessee in ITA No. 509/Viz/2019, dated 25/09/2019. The Ld. CIT(A)-NFAC after considering the submissions of the assessee deleted the addition made by the Ld. AO. While deleting the addition, the Ld. CIT(A)-NFAC observed that the payment of employees contribution in regard to PF and ESI if made before the due date of filing of the return of income U/s. 139(1) of the Act the same is allowable as deduction as per provision of section 36(1)(va) r.w.s 43B of the Act. The Ld. CIT(A)-NFAC further observed that the amendments to section 36(1)(va) and 43B are effective prospectively from 01/04/2021. In support of his observations, the Ld. CIT(A)-NFAC, relied on various decisions of the Tribunal as tabulated in page 7 of his order. Aggrieved by the order of the Ld. CIT (A)-NFAC, the Revenue is in appeal before the Tribunal.

8. Before us, the Ld. AR filed written submissions and relied on various case laws. Further, the Ld. AR argued that the disallowance U/s. 36(1)(va) has been made while processing the return U/s. 143(1) of the Act claiming it to be an incorrect claim

as defined U/s. 143(1)(a)(ii) of the Act. The Ld. AR further submitted that the Explanation to section 143(1) defines "an incorrect claim apparent from any information in the return" comprises of three items as mentioned in the Explanation. The Ld. AR further pleaded that it does not cover the disallowance of deduction as envisaged U/s. 36(1)(va) of the Act. The Ld. AR also submitted that in the intimation, the reasons for disallowance state that "in Schedule-BP SI No.14 the amount of expenditure disallowed is not in consistent with the amount shown in Schedule OI". The Ld. AR further submitted that it is not the expenditure claimed by the assessee it is income and hence disallowance of expenditure suo motto made by the Ld. DCIT, CPC is not valid. The Ld. AO also referred to the CBDT Circular mentioned in para 35 of the Hon'ble Supreme Court judgment in the case of Checkmate Services P. Ltd & Ors vs. CIT & Ors in Civil Appeal No. 2833 of 2016, dated 12/10/2022. The Ld. AR further submitted that the disallowance U/s. 143(1) of the Act with respect to the increase in the income is applicable only from 1/4/2021 and not for the earlier years. The Ld. AR further reiterated that the expenses can be disallowed U/s. 143(1)(a) but no income can be added in the intimation. The Ld. AR vehemently argued that the receipt by the assessee can only be

expenditure. The Ld. AR further submitted that the CBDT Circular referred by the Hon'ble Supreme Court talks about the income and it is not expenditure which can be disallowed. This view was also approved by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd & Ors vs. CIT & Ors (supra) by referring to the said Circular in its judgment. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

Per contra, the Ld. DR relied on the earlier orders of the Coordinate Bench in the case of Eastern Warehouse Corporation vs. ITO [ITA No.175/Viz/2022, AY 2018-19] and others, order dated 08/03/2023 and submitted that the issue with reference to belated remittance of employee's contribution under PF & ESI is a settled one by the judgment of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd & Ors vs. CIT & Ors (supra). The Ld. DR further submitted that the "due date" to mean the date by which the assessee is required, as an employer, to remit the employee's contribution of PF & ESI in the Government Treasury as prescribed under the respective Act and not the due date of filing of the return of income U/s. 139(1) of the Act. So far as section 143(1) is concerned, the Ld.DR categorically mentioned that the CPC is empowered to disallow the same, as it is covered in clauses mentioned in

section 143(1)(a)(ii), wherein, it is mentioned that an incorrect claim is also one of the reasons for disallowance. The Ld.DR relied on the decision of coordinate Bench of ITAT Chennai in the case of Sree Gokulam Chit and Finance Co.P.Ltd. Vs. DCIT, Chennai vide I.T.A.No.765/CHNY/2022 dated 21.12.2022 and the decision of Hon'ble High Court of Madras in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income Tax [2022] 138 taxmann.com 571 (Madras) in support of his argument and pleaded that the order passed by the Ld. CIT(A) be set aside and that of the order of the Ld. AO [Ld. DCIT, CPC] be confirmed.

9. We have heard both the parties and perused the material available before us as well as the orders of the Ld. Revenue Authorities. This issue with regard to late remittance of the employee's contribution under PF and ESI is settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. mentioned supra. With regard to the Ld. AR's argument that *it is not the expenditure claimed by the assessee it is income and hence disallowance of expenditure suo motto made by the Ld. DCIT, CPC is not valid*, the Apex Court in the case of Checkmate Services Pvt. Ltd. mentioned supra have dealt with this issue and their Lordships have held as under:

*"54. In the opinion of this Court, the reasoning in the impugned judgment that the non-obstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee is given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. **That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction.** Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction."*

From the above it is clear that employee's contribution of PF & ESI have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Therefore, the Ld. AR's argument does not hold good in view of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd (supra).

10. Now, the only contention of the Ld.AR is that the CPC has no power to make any adjustment u/s 143(1) intimation and it is applicable w.e.f. 01.04.2021. The Ld.AR further contended that the assessee never

claimed any incorrect claim or there is no audit objection etc. which is mentioned u/s 143(1) of the Act. Now the question arises in view of the provisions of section 143(1)(a) of the Act, while processing the return of income filed by the assessee, the total income or loss shall be computed after making the following adjustments as described u/s 143(1)(a)(ii) of the Act i.e. an incorrect claim, if such claim is apparent from any information in the return or not. The Memorandum of Finance Bill, 2008 as well as Finance Bill, 2016 explaining the provisions of section 143(1)(a)(ii) of the Act will explain the situation, which is reproduced as under :

“Memorandum to Finance Bill, 2008

Correction of arithmetical mistakes and adjustment of incorrect claim under section 143(1) through Centralised Processing of Returns. Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy. In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistency, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. In the second stage, a certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income. In India, the scheme of summary assessment being in force since the 1 day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of section 143(1), there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss. With an objective to reduce such revenue loss, it is proposed to amend section 143(1) of the Income-tax Act. It is proposed to provide that the total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return :

(a) any arithmetical error in the return; or

b) an incorrect claim, if such incorrect claim is apparent from any information in the return. Further it is proposed to clarify the meaning of the term "an incorrect claim apparent from any information in the return".

This term shall mean such claim on the basis of an entry, in the return,-

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;

(b) in respect of which, information required to be furnished to substantiate

such entry, has not been furnished under this Act; or

(c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

Further, these adjustments will be made only in the course of computerized processing without any human interface. In other words, the software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income, (emphasis supplied). For this purpose the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this, it is also proposed that-

(a) the Board may formulate a scheme with a view to expeditiously determine the tax payable by, or refund due to, the assessee,

(b) the Central Government may issue a notification in the Official Gazette, directing that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such restrictions, modifications and adaptations as may be specified in the notification. However, such direction shall not be issued after 31st March 2009;

(c) every notification shall be laid before each House of Parliament as soon as such notification is issued. Along with the notification, the scheme referred above is also required to be laid before each House of Parliament. Similar amendment has also been proposed in section 15WE of the Income-tax Act, relating to fringe benefits.

These amendments will take effect from 1st April, 2008.

Memorandum to Finance Bill 2016

Legislative framework to enable and expand the scope of electronic processing of information

In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments (emphasis supplied) that can be made at the time of Processing of returns under sub-section (1) of section 143. It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. (emphasis supplied) However, before making

any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

These amendments will take effect from the 1st day of June, 2016"

11. From the above Memorandum of Finance Bill, 2008 & 2016 explaining the provisions of section 143(1)(a)(ii) specifies the incorrect claim particularly if such incorrect claim is apparent from any information in the return of income and that can be any information as such as the audit report or some other information as provided by assessee in the return of income. In this context, it is pertinent to mention that earlier position is only prima-facie arithmetic adjustments can be made, but in view of the amended provisions by the Finance Act, 2008, w.e.f. 01.04.2008, the amended provisions empowers adjustments to be made inter alia on the basis of remarks indicated in the return of income or incorrect claim apparent from any information in the return of income. Post amendment w.e.f. 01.04.2008, the scope of adjustment u/s 143(1) of the Act has widened and enlarged. It provides that total income shall be computed after making adjustments inter-alia on account of incorrect claim, if such incorrect claim is apparent from any information in the return of income. In the case on hand before me, the adjustments u/s 143(1)(a) has been made on the basis of information contained in the tax

audit report with respect to the belated payments of employees contribution of EPF and ESI paid beyond the due dates prescribed under the respective Act and these various funds are referred in section 36(1)(va) of the Act. The information gives the details of due date of payment, actual date of payment to the concerned authorities and these payments have been made beyond the due dates specified in the respective Acts i.e. Provident Fund Act & ESI Act, which attracts the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Act, leading to disallowance of this sum to the extent not paid on or before the due date stipulated in the respective PF and ESI Act. In this context, it is pertinent to mention about the ratio laid down by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. Deputy Commissioner of Income Tax [2022] 138 taxmann.com 571 (Madras), wherein, it was categorically held that if there is any incorrect claim made in the return, the disallowance made by the CPC is valid. Therefore, we are of the view that the decisions relied on by the Ld.AR has no application, in view of the decision of Hon'ble High Court of Madras. The Hon'ble High Court of Madras held that:

"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 purpose of section 143(1)(a) of the Act."

12. It is also pertinent to mention that the coordinate bench of ITAT, Chennai in the case of Sree Gokulam Chit and Finance Co.P.Ltd. Vs. DCIT, Chennai vide I.T.A.No.765/CHNY/2022 dated 21.12.2022 has also taken a view that *"if the information gives the details of due date of payment, actual date of payment to the concerned authorities and these payments have been made beyond the due dates specified in the respective Acts i.e. Provident Fund Act & ESI Act, which attracts the provisions of section 36(1)(va) r.w.s. 2(24)(x) of the Act, leading to disallowance of this sum to the extent not paid on or before the due date stipulated in the respective PF and ESI Act."* Further, this Bench of the ITAT, Visakhapatnam (Single Member Bench) on identical circumstances discussed the issue ie., *whether the CPC can make adjustments based on the information available before them U/s. 143(1) of the Act or not at length in the case of Eastern Warehouse Corporation vs. ITO and Others in ITA No. 175/Viz/2022 (AY: 2018-19), dated 08/03/2023 and took a view in consonance with the decision of the Hon'ble Madras High Court in the case of AA520 Veerappalayam Primary Agricultural Cooperative Credit Society Ltd vs. DCIT [2022] 138 taxmann.com 571 (Mad) (supra) and held that the adjustments made by the CPC U/s. 143(1) are valid.*

Thus, respectfully following the ratio laid down by the Hon'ble Madras High Court in the case of AA520 Veerappalayam Primary Agricultural Credit Society Ltd (supra) as well as the decision of the ITAT, Visakhapatnam Bench in the case of Eastern Warehouse Corporation and Others (supra), decision of the Coordinate Bench of ITAT at Chennai in the case of Sree Gokulam Chit and Finance Co. P. Ltd (supra), we have no hesitation to come to a conclusion that the adjustments made by the CPC U/s. 143(1) are valid and therefore we set-aside the order of the Ld. CIT(A) and allow the grounds raised by the Revenue.

13. In the result, appeal filed by the Revenue for the AY 2018-19 is allowed.

14. With respect to ITA No. 227/Viz/2022 (AY: 2019-20), since the Revenue has raised the identical grounds and issues in its appeal in ITA No. 226/Viz/2022 (AY: 2018-19) which is adjudicated herein above, our decision given on the Revenue's appeal for the AY: 2018-19 (supra) *mutatis mutandis* applies to the Revenue's appeal for the AY 2019-20 also. Accordingly, the grounds raised by the Revenue in its appeal for the AY 2019-20 are allowed.

15. In the result, the appeal filed by the Revenue for the AY 2019-20 is allowed.

CO Nos. 15 & 16/Viz/2023 (AY: 2018-19 & 2019-20)
(By Assessee)

16. These Cross Objections are filed by the assessee for the AY 2018-19 and 2019-20. While adjudicating the Revenue's appeals for the AYs 2018-19 and 2019-20, since we have allowed the grounds raised by the Revenue for both the AYs, the grounds raised by the assessee in its Cross Objections have no legs to stand and the adjudication of the COs become infructuous. Thus, the Cross Objections raised by the assessee are dismissed as infructuous.

17. In the result, both the Cross Objections raised by the assessee are dismissed as infructuous.

ITA No.97/Viz/2023 (AY: 2020-21)
(By Assessee)

18. This appeal filed by the assessee against the order of the Ld. CIT (A)-NFAC in DIN & Order No. ITBA/NFAC/S/250/2022-23/1050033252(1), dated 23/02/2023 arising out of the order passed U/s. 143(1) of the Act for the AY 2020-21.

19. Brief facts of the case are that the assessee filed his return of income for the AY 2020-21 on 08/02/2021 declaring total income of Rs. 2,79,20,960/-. The return was processed U/s. 143(1) of the Act and made disallowance of expenditure U/s. 36(1)(va) at Rs.4,99,01,746/- (towards PF of Rs. 4,56,10,147 + Rs. 42,91,599/- towards ESI) and made adjustment U/s. 143(1)(a) of the Act. Aggrieved by the order of the CPC, dated 16/12/2021 the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal the Ld. CIT(A)-NFAC dismissed the assessee's appeal by holding that there is no error found on the part of the Ld. AO while invoking the provisions of section 36(1)(va) of the Act and the Ld. AO has rightly brought the belated deposit of Rs. 4,99,01,746/- being employee's contribution to EPF / ESI. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in further appeal before the Tribunal by raising the following grounds of appeal:

- "1. In the facts and circumstances of the case and as per law the Ld. AO at CPC is not justified in making adjustment and CIT(A)-NFAC is not justified in confirming the adjustment of the EPF and ESI paid before the due date U/s. 139(1) but beyond the due dates prescribed under the respective Acts - Rs. 4,99,01,746/-.*
- 2. The adjustment made by the CPC is beyond the scope of the provisions of section 143(1)(a)(iv) under which*

the CPC proposed to make adjustment to the return of income.

3. *All the above grounds of appeal are mutually exclusive and without prejudice to one another.*
4. *The appellant craves leave to add to, delete, alter, modify all or any of the above grounds of appeal."*

20. The core issues raised in this appeal are with regard to (i) remittance of belated payments under PF and ESI and (ii) whether the CPC can make adjustments U/s. 143(1) intimation on the basis of remarks indicated in the return of income or disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return. These issues are dealt with by us while adjudicating the Revenue's appeal in ITA No. 226/Viz/2022 (AY 2018-19) and ITA No. 227/Viz/2022 (AY 2019-20) and held that with regard to late remittance of contribution under PF and ESI is a settled matter in view of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd (supra). Further, on the issue of validity of the adjustments made by the CPC under 143(1) intimation, respectfully following the ratio laid down by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd vs. DCIT (supra) and also the decision of the

Coordinate Bench at Chennai in the case of Sree Gokulam Chit and Finance Co. P. Ltd (supra) and also the decision of this Bench in the case of Eastern Warehouse Corporation vs. ITO (supra) we are of the considered view that the adjustments made by the CPC U/s. 143(1) are valid. Therefore, since the issue is identical in the Revenue's appeals and that of the issue raised in the assessee's appeal for the AY 2020-21, our decision given in the Revenue's appeals mutatis mutandis applies to the assessee's appeal also.

21. At this juncture, it is pertinent to mention about the decision of the Ld. CIT(A)-NFAC. While dismissing the appeal of the assessee, the Ld. CIT(A)-NFAC has held as under:

"5.1.5. In view of the aforesaid, it is amply clear that even prior to insertion of Explanation 2 in section 36(1)(va) and Explanation 5 in Section 43B by the Finance Act, 2021 w.e.f 1/4/2021, section 43B will not apply to employees contributions to PF, ESI etc., as claimed by the appellant. In case contributions collected from the salaries of the employees are not deposited within the due date prescribed under the respective EPF/ESI Act., then the addition of the said amount as income of the employer U/s. 2(24)(x) read with section 36(1)(va) of the Act is automatic and mandatory. The case laws cited byt eh appellant of jurisdictional appellate Tribunal lost relevance.

5.1.6. Therefore I am of the considered view that the AO has rightly brought the delayed deposit of Rs. 4,99,01,746/- being the employees contribution to EPF/ESI, within the ambit of taxation by invoking provisions of section 36(1)(va) of the Act. There is, thus, no error found on the part of the

AO on this issue. In this view of the matter, I find no substance in the contentions of the appellant, they are devoid of any merits and hence, rejected. The action of the Ld. AO in this regard, is therefore confirmed and the ground of appeal is decided against the appellant.

6.0. Accordingly, the ground of appeal is dismissed."

22. On perusal of the above observations and decision of the Ld. CIT(A)-NFAC, in our view, the Ld. CIT(A)-NFAC has taken a right view which is in consonance with the decision taken by us while adjudicating the Revenue's appeal for the AY 2018-19 and 2019-20 (supra). Therefore, we are of the considered view that there is no infirmity in the decision of the Ld. CIT(A)-NFAC and accordingly, no interference is required. It is ordered accordingly.

23. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on the 17th July, 2023.

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 17/07/2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Sri Guntubolu Uma Sai Prasad, 38-19-10/7, Sai Nivas Jyothi Nagar, Murali Nagar, Visakhapatnam, Andhra Pradesh-530005. (ii) Guntubolujk Uma Sai Prasad, 301, d.No. 49-47-9, Shanthipuram, Akkayapalem SO, Visakhapatnam (Urban), Andhra Pradesh.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-3(1), Income Tax Office, Infinity Towers, Shankaramatham Road, Santhipuram Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam