

**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. 140/Asr/2023**  
Assessment Year: 2020-21

New Light Facility  
Management, SCF 59,  
1<sup>st</sup> Floor, Urban Estate,  
Phase-1, Jalandhar  
144001

[PAN: AAGFN 7471G]  
**(Appellant)**

**Vs.** Income Tax Officer  
Ward-4(3), Jalandhar

**(Respondent)**

Appellant by : Sh. Gunjeet Singh Syal, Adv.

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 13.07.2023

Date of Pronouncement: 18.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 29.03.2023 in respect of Assessment Year 2020-21 challenging there in the

jurisdiction of the CIT(A) passing an order u/s 154 of the Act contending therein that there was no patent mistake apparent from the record in the appellate order u/s 250 of the I.T. Act.

2. At the outset, the Id. counsel for the assessee has contended that the Id. CIT(A) has exceeded in its jurisdiction in passing the impugned order u/s 154 dated 29.03.2023 since there was no apparent mistake from the record as the assessee has admittedly deposited the employees' contribution to PF & ESI before the due date of filing of the income tax return, therefore, respectfully following the decisions of the jurisdictional ITAT, the CIT(A) had legally allowed the appeal of the assessee u/s. 250 of the I.T. Act vide order dated 28.09.2022. The counsel argued that the Id. CPC, Bangalore, while processing the return u/s 143(1)(a)(iv), disallowed the Employees Contribution to the Provident Fund, where as the Tax Auditor had not stated in the instant case to disallow Employees Contribution to Provident Fund. The counsel argued that the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT reported in 143 taxmann.com 178 (SC) dated 12.10.2022 was rendered in the context where assessment was framed u/s 143(3) of the Act and not u/s 143(1)(a). Thus, the Id. counsel contended that the action of the CPC,

Bangalore while disallowing the Employees' Contribution Provident Fund while processing in the return u/s 143(1)(a)(iv) of the Act was against the provisions of the Act as it would not fall within the ambit of the prima facie largest adjustments and there is no mistake apparent from the record to be rectified the order dated 28.09.2022 of the worthy CIT(A), NFAC, Delhi. He pleaded that the impugned order is bad in the eyes of law.

3. Per contra, the Id. DR supported the order passed by the Id. CIT(A) u/s 154 of the Act. The DR has referred to the relevant part of the Id. CIT(A) order is as follows:

*"1. It has finally been held by Hon'ble Supreme Court that there is clear distinction between employer's contribution which is its primary liability under law [in terms of Section 36(1)(iv)] and its liability to deposit amounts received by it or deducted by it from its employees' [in terms of Sec. 36(1)(va)]. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of Section 2(24)(x) and therefore, subjected to conditions spelt out by Explanation to Section 36(1)(va) i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two contributions - the employer's liability is to be paid out of its income whereas the second is deemed to be an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under Section 43B. If the same is not deposited as per mandate of Sec.36(1)(va), the deduction of the same would not be available to the assessee.*

*2. In view of the above, since the employees contributions towards ESI and PF has not been deposited within the due dates prescribed under the provisions of relevant laws and the A.O., CPC in the intimation passed u/s. 143(1)(a) has rightly disallowed the said deduction of expenditure. There is a mistake apparent*

*from record in the order of Ld. CIT(Appeal) passed u/s. 250 of the I. T. Act dated 28.09.2022 in as much as deduction on account of delayed payment of employees contribution to ESI amounting to Rs. 11,70,718/- was wrongly allowed and the issue of delayed payment of employees contribution to PF amounting to Rs. 15,85,541 /- was not adjudicated.*

*3. In view of the above facts of the case and in law, I hold that the appellant is not eligible for deduction u/s. 36(1)(va) of the I.T. Act in respect of delayed payment of employees contribution to ESI and PF amounting to Rs.11,70,718/- and Rs.15,85,541/- respectively. The impugned order u/s. 250 dated 28.09.2022 stand amended accordingly.*

4. We have heard the rival contention, perused the material on record the orders passed by the CIT(A) and in the case law cited before us. Admittedly, the first appellate order u/s 250 of the I.T. Act in the case of the assessee passed on 28.09.2022 well before the pronouncement of the decision by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. v. CIT (supra) dated 12.10.2022 on the issue of deposit of Employees' Contribution to PF & ESI within the due date prescribed under the provisions of relevant law. With the pronouncement of the Hon'ble Apex Court judgment in the case of Checkmate Services Pvt. Ltd. v. CIT (supra), the law is settled on the issue of the employees' contribution towards PF & ESI which has to be deposited within the due date prescribed under the provisions of PF & ESI Act. Since the assessee has failed to deposit the employees' contribution towards PF & ESI within the prescribed due dates

which has been earlier allowed by the CIT(A) in its earlier order passed u/s 250 of the Act dated 28.09.2022 has been rectified by holding that the AO CPC in the intimation passed u/s 143(1)(a)(iv) has rightly allowed the said deduction of the expenditure.

5. In the light of the Hon'ble Apex Court judgment in the case of Checkmate Services Pvt. Ltd. v. CIT (supra), there was a mistake apparent from the record in the order of the Id. CIT(A) u/s 250 of the Act dated 28.09.2022 in as much as deduction on account of delayed payment of employees' contribution to PF & ESI, amounting to Rs.11,70,718/- and Rs.15,85,541/- was wrongly allowed.

6. In our view, the Id. CIT(A) was justified in holding that the appellant was not eligible for deduction u/s 36(1)(va) of the IT Act in respect of delayed payment of employees' contribution to PF & ESI amounting to Rs.11,70,718/- and 15,85,541/- respectively. The Id. CIT(A) by following the Hon'ble Apex Court judgment in the case of Checkmate Services Pvt. Ltd. v. CIT (supra) dated 12.10.2022 has exercised a valid jurisdiction by rectifying the mistake apparent from the record u/s 154 of the Act in the appellate order passed u/s 250 of the I.T. Act dated 28.09.2022.

7. In the above view, we find no infirmity or perversity in the order of Id. CIT(A) to the facts on record. Thus, the contention raised by the appellant are held to be devoid of merits and substance. Accordingly, the order of the Id. CIT(A) is sustained.

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

*Order pronounced in the open court on 18.07.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

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

True Copy  
By Order