

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.432/Bang/2023
Assessment Year: 2021-22

Prolific HR Consultants (India) Ltd. No.3, DTDC House Victoria Road Bangalore Karnataka 560 047 PAN NO : AAEC2260L	Vs.	Deputy Commissioner of Income- tax CPC, Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Srinivas K.P., A.R.
Respondent by	:	Shri Nischal B., D.R.

Date of Hearing	:	18.07.2023
Date of Pronouncement	:	18.07.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2021-22 dated 25.4.2023. The assessee has raised following grounds of appeal:-

- 1 The CPC/AO grievously erred by adding to income u/s 36(l)(va) of Rs.77,36,680/- being-Amount not paid to the concerned authority before due date specified under PF law for the month of April 2020. The Learned CIT(A) has erred in upholding that addition made by the AO.*
- 2 The Learned CIT(A) and AO has grievously erred in overlooking the extraordinary situation prevailing in the Country at that time, caused by the Covid pandemic and also the beneficial circulars issued by the PF authorities in condoning the delay in remittances of PF contribution by the employers, thereby impliedly extending the "due date" under the respective PF laws, warranting full deduction as a business expenditure for such payments made before filing the return of income.*

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- 3 *The Learned CIT(A) has grievously erred in considering the decision of the Hon'ble Supreme Court in the case of Checkmate Services P Limited which was not rendered in the circumstances when the Provident Fund authorities themselves had decided not to initiate any proceedings for levy of penal damage in view of the unprecedented circumstances due to the Covid pandemic.*
- 4 *The Learned CIT(A) has grievously erred in contending that the tax liability arising from this addition to income is not in the nature of penal damages and is only an additional contribution.*
- 5 *Without prejudice to the other grounds, the CPC/AO has erred on facts and in law by making the addition of Rs.77,36,680/- in the order issued under section 143(1) on a debatable and controversial issue which is beyond the scope of Section 143(1) and NFAC has erred by allowing the same. The Learned CIT(A) has erred in upholding that addition*
- 6 *For these and other grounds that may be adduced at the time of the hearing, the order of the learned CIT(A) may be set aside to the extent appealed against and this appeal may be allowed.*
- 7 *Your appellant craves leave to add, amend, alter, vary and/ or withdraw any or all of the above*

2. The crux of above grounds is with regard to disallowance of employees' contribution of PF to the government account after the due date as mentioned in PF Act.

3. The ld. A.R. submitted that this PF is relating to April, 2020 as this period was covered by Covid period. As such these amounts were remitted with short delay to the government account and liberal view may be taken.

4. The ld. D.R. relied on the order of lower authorities.

5. We have heard the rival submissions and perused the materials available on record. This issue came for consideration before Hon'ble Supreme Court in the case of CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022 wherein it was decided that the issue on allowability/treatment of 'delayed' Employee PF Contribution payment in hands of assessee under provisions of Income Tax Act and held that Section 36(1)(va) and Section

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43B(b) operate on totally different equilibriums and have different parameters for due dates, i.e., employee's contribution is linked to payment before the due dates specified in the respective Acts and employer's contribution is linked to the payment before the prescribed due date for filing of return u/s. 139(1) of Income Tax Act, 1961. The result of any failure to pay within the prescribed dates also leads to different results. In the case of employee's contribution, any failure to pay within the prescribed due date under the respective PF Act or Scheme will result in negating employer's claim for deduction permanently forever u/s.36(1)(va). On the other hand, delay in payment of employer's contribution is visited with deferment of deduction on payment basis u/s.43B and is therefore not lost totally. Therefore, as per the above decision, the disallowance made by the Revenue authorities, were fully justified.

5.1 Regarding the plea of the assessee that payment is related to April, 2020, which is during the Covid period, in our opinion, there is no exemption granted by Government in this regard. Accordingly, appeal of the assessee is dismissed.

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

Order pronounced in the open court on 18th July, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 18th July, 2023.
VG/SPS

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1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**