

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA**

**Before**

**Shri Sanjay Garg, Judicial Member**

**&**

**Dr. Manish Borad, Accountant Member**

**I.T.A. No.164/KOL/2023**

**Assessment Year: 2013-14**

M/s. Topsel Pvt. Ltd. C/o M/s. Salarpuria Jajodia & Co., 7, C. R. Avenue, 3 <sup>rd</sup> Floor, Kolkatga-700072. (PAN: AABCT2439G)	<b>Vs.</b>	Deputy Commissioner of Income-tax, Circle-2(2), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appearances by:**

*Shri Siddhadrth Jhajharia, FCA appeared for Appellant.*

*Shri Sunil Kr. Agarwala, CIT, DR appeared for Respondent.*

Date of concluding the hearing : 08.08.2023

Date of pronouncing the order : 09.08.2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Id. Commissioner of Income-tax, NFAC, Delhi [in short Id. “CIT(A)”] dated 20.02.2023 arising out of the order framed u/s 143(3) of the Act by DCIT, Circle-2(2), Kolkata dated 28.03.2016.

2. Though the assessee has raised as many as five grounds of appeal but grievance is only with regard to disallowance in respect of employees’ contribution to PF & ESI u/s. 2(24)(x) r.w.s. 36(1)(va) of the Act of Rs.15,12,939/-.

3. Brief facts of the case are that the assessee is a Private Limited company. Income of Rs.11,16,30,850/- declared in the return filed for AY 13-14. Ld. Counsel for the assessee vehemently argued that in the assessment proceeding u/s. 143(3) of the Act disallowance was made u/s. 36(1)(va) of the Act in the order dated 28.03.2016 but the same was also affirmed by the Ld. CIT(A) vide its order dated 20.02.2023. Thereafter, assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of AO. Aggrieved, assessee is now in appeal before the ITAT.

4. On the other hand, Ld. CIT, DR vehemently supported the orders of lower authorities.

5. We have heard rival submissions and gone through the material available on record and placed before us. We notice that on the aforesaid issue relating to disallowance in respect of delay in deposit of employees' contribution to Provident Fund, the issue is squarely covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.*" Hon'ble Supreme Court has held that by virtue of section 2 (24) (x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2 (24)(x) , unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. It is further held that there is a marked distinction between the nature and character of the two amounts - the employer's liability is to

be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

6. In view of above discussion, we do not find any merit in the appeal of the assessee and the same is hereby dismissed.

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

Order is pronounced in the open court on 09.08. 2023.

Sd/- [Sanjay Garg]  
Judicial Member

Sd/-[Manish Borad]  
Accountant Member

Dated: 09.08.2023

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant** –
2. **Respondent**
3. CIT(A), NFAC, Delhi.
4. CIT-
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata