

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Shri Pradip Kumar Kedia, Accountant Member**

ITA No. 540/Del/2023
(Assessment Year: 2018-19)

Harbir Singh, C/o. CA MR Sahu, House No. 651, 1 st Floor, Sector-10A, Near GD Goenka Public School, Gurgaon, Haryana (Appellant) PAN: AFRPA3023P	Vs.	ITO, Ward-1(4), Gurgaon (Respondent)
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Assessee by :	Sh. M. R. Sahu, CA
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	31/07/2023
Date of pronouncement	10/08/2023

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the assessee against the order of the Id CIT(A)/ National Faceless Appeal Centre (NFAC), Delhi dated 27.12.2022 for AY 2018-19.
2. As per grounds of appeal, the assessee has challenged the disallowance of employees contribution to Provident Fund/ESIC under Section 36(i)(va) r.w.s 43B of the Act.
3. When the matter was called for hearing, Learned Counsel for the assessee, Shri M. R. Sahu, CA submitted that the impugned employee's contribution towards PF and ESIC has been paid and deposited before the due date allowed under Section 139(1) of the Act although the assessee has remitted the payment belatedly and

beyond the due dates specified in respects Acts. It was thus contended that where the assessee has complied with the obligation of payment towards employee's contribution before the due date, the deductions are allowed under Section 36(1)(va) of the Act as held in several judicial pronouncements including the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. Pro Interactive Service (India) Pvt. Ltd. vide order dated 10.09.2018 in ITA No.983/2018.

4. Learned Sr. D.R. for the Revenue on its part, contended that Central Processing Centre ("CPC") has made additions of Rs. 72,64,850/- to the returned income of the assessee on account of late deposit of employees contribution to Provident Fund/ESIC while processing the return of income. In this regard, the action of the Revenue in making disallowance towards late deposit of employees' contribution to Provident Fund/ESIC was supported by the judgement rendered in the case of Checkmate Services (P) Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC) Learned Sr. D.R. for the Revenue thus submitted that even for Assessment Years prior to Assessment Year 2021-22, belated employees' contribution are to be reckoned as taxable income of the assessee under Section 2(24)(x) of the Act and the deduction under Section 36(i)(va) of the Act would not be permissible thereon in case of belated payments. Learned Sr. D.R. for the Revenue further contended that the delayed deposit of employees' contribution indicated in the Audit Report is sufficient for adjustment under Section 143(1) of the Act, as held by the Pune Bench of the Tribunal in the case of Cemetile Industries vs. ITO TS-933-ITAT-2022 (Pune).

5. The issue towards taxability of belated employees' contribution to Provident Fund/ESIC is no longer res initegra in the light of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT (supra). The Co-ordinate Bench of the Tribunal in Cemetile Industries vs. ITO (supra) had expressed a view

that such adjustment/disallowance is also permissible in the proceedings carried out under Section 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in Savleen Kaur & Others vs. ITO in ITA Nos. 2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023 has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-ordinate Benches, we do not see any merit in the appeal of the assessee on first principles.

6. The Co-ordinate Bench of Tribunal in the case of Sentinel Consultants Pvt. Ltd. vs. ACIT ITA No.7 & 8/Del/2023 order dated 12.06.2023 observed in para no.9.3 of that order that month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date. The relevant operative para of the order of the Co-ordinate Bench of Tribunal is reproduced herein under for ready reference:

"9.3 We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanoi Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT(A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity."

7. The observations made in Sentinel Consultants Pvt. Ltd. Shall apply mutatis mutandis. Consequently, we consider it expedient to restore the issue back to the file of AO for factual verification and

redetermination in the issue on the light of determination made by the Co-ordinate Bench in the case of Kanoi Paper and Industries Ltd. (supra). The AO shall thus re-compute the amount of disallowance under Section 36(i)(va) of the Act, if any, on the above basis, in accordance with law. The assessee shall be entitled to appropriate relief under Section 36(i)(va) of the Act where it is found that deposits have been made towards PF/ESIC within the due date from the close of month of actual disbursement of salary/wages in the light of interpretation rendered in the case of Kanoi Paper and Industries Ltd.(supra).

8. Hence, in terms of such observations, the intimation for A.Y. 2020-21 is set aside and the issue in appeal is restored back to the file of AO for its fresh determination in accordance with law.

9. In the result, appeal of the assessee is allowed ex parte for statistical purposes.

Order pronounced in the open court on 10/08/2023.

-Sd/-
(Pradip Kumar Kedia)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 10/08/2023

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi