

**आयकरअपीलीयअधिकरण, विशाखापटणम "एसएमसी"पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.96/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2019-20)**

Arnav Travels  
51-8-40/32/9  
KRM Colony backside  
Eenadu, Visakhapatnam  
**[PAN : AANFA2794G]**

Vs. Income Tax Officer  
Ward-3(3)  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by : None  
प्रत्यर्थी की ओर से / Respondent by : Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing : 10.08.2023  
घोषणा की तारीख/Date of Pronouncement : 17.08.2023

**आदेश /O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1049052185(1) arising out of assessment order passed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act') dated 10.04.2020 for the Assessment Year (A.Y.) 2019-20.

2. Brief facts of the case are that the assessee is a firm, carrying out the travels business, e-filed its return of income u/s 139 of the Act on 22.10.2019, declaring a total income of Rs.2,53,193/-. However, the Centralized Processing Centre (CPC) had processed the return of income u/s 143(1) vide its order dated 10.04.2020 by assessing the gross total income at Rs.3,42,186/-. The CPC disallowed a sum of Rs.88,993/- (PF of Rs.82,362/- and ESI of Rs.6,631/-) to the returned income as the assessee deposited the PF / ESI Employees Contribution after the due date of the respective Acts i.e. PF Act and ESI Act.

3. Aggrieved by the order of the CPC, the assessee preferred an appeal before the CIT(A) and the Ld.CIT(A), relying on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1, dismissed the appeal of the assessee.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

*The order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as "CIT(A)") is bad and unsustainable in the eyes of law as the same is passed without proper application of mind, as it is also contrary to the spirit and provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act").*

- *The only dispute in this appeal is the addition of Rs.88,993/- made by the CIT(Appeals), National faceless assessment center, towards disallowance of employee's contribution to PF & ESI. The appellant submits that though the amount could not be paid within the due dates under the PF Act and ESI Act, the same were paid before the due date of filing the return u/s 139(1) of the Act. Thus, the appellant submits that the amount is allowable u/s 43B of the Act.*
- *The above contention of the appellant is duly supported by the jurisdictional ITAT Order dt.20.09.2017 of the hon'ble ITAT, Visakhapatnam in the case of Eastern Power Distribution Company of AP Ltd. in ITA No.374/Viz/2017. The appellant submits that the disallowance is not warranted as the issue is squarely covered by the aforesaid decision of the hon'ble ITAT, Visakhapatnam Bench.*

5. None appeared on behalf of the assessee. The only issue raised in the grounds of appeal is that the AO as well as the Ld.CIT(A) are not justified in disallowing the deposits made by the assessee towards PF / ESI before the due date of filing the return of income u/s 139(1) of the Act, though the same could not be paid within the due dates specified under PF Act and ESI Act and same ought to have been allowed as deduction u/s 43B of the Act

6. The Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order passed by the Ld.CIT(A) and dismiss the appeal filed by the assessee.

7. I have heard the Ld.DR and perused the material available on record. Now the law is settled after a view had been taken by Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd., in Civil Appeal No.2833 of 2016, order dated 12.10.2022. In the case on hand also, the assessee made remittances before filing the return of income u/s 139(1), but not within the due date specified by the respective PF / ESI Acts. The judicial pronouncement of ITAT in the case of Eastern Power Distribution Company of AP Ltd. in ITA No.374/Viz/2017 dated 20.09.2017 relied by the assessee was passed before the order in the case of Checkmate Services Pvt. Ltd., was rendered by the Hon'ble Supreme Court supra, hence, not applicable to the assessee's case. For the sake of clarity and convenience, relevant part of the order of hte Checkmate Services Pvt. Ltd.(supra) is extracted as under :

*"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 deduction that such amounts are deposited on or before the due date."*

Since the decision of the Hon'ble Supreme Court pronounced the correct legal position of the allowability of belated payment of PF and ESI under the provisions of the Act, I am of the considered view that there is a mistake arisen as a result of the subsequent interpretation of law by the

Hon'ble Supreme Court which would constitute "a mistake apparent from the records".

8. Therefore, I have no hesitation to come to a conclusion that the disallowance made by the AO as well as the Ld.CIT(A) needs no interference, in view of the decision of the Hon'ble Supreme Court mentioned supra.

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

Order pronounced in the open court on 17<sup>th</sup> August, 2023.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 17.08.2023  
*L.Rama, SPS*

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

1. निर्धारिती/ The Assessee- M/s Arnav Travels, 51-8-40/32/9, KRM Colony backside, Eenadu, Visakhapatnam
2. राजस्व/The Revenue – The Income Tax Officer, Ward-3(3), Income Tax Office, Infinity Towers, Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam