

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM**

ITA. No.2083/Mum/2022

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Narang Connect Pvt. Ltd. B-869, 2 <sup>nd</sup> Floor, Sarkar Heritage, Kane Road, Bandstand, Bandra (West), Mumbai-400050.	<b>बनाम</b> / Vs.	DCIT-7(3)(1) Aayakar Bhavan, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCN5921E</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Anil Sant	

सुनवाई की तारीख / Date of Hearing: 07/07/2023

घोषणा की तारीख /Date of Pronouncement: 04/08/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 01.07.2022 for AY. 2011-12.

2. It is noted that this captioned appeal of assessee company was allowed in the first round by this Tribunal vide order dated 28.09.2022. However, the same has been recalled in MA No. 231/Mum/2023 in the light of the Hon'ble Supreme Court decision in the case of Checkmate Services Pvt. Ltd. Vs. CIT (448 ITR 518). Therefore, this appeal is adjudicated afresh. The main grievance of assessee is against the action of Ld. CIT(A) confirming the disallowance of employee's contribution made towards PF/ESI to the tune of Rs.6,07,937/-.

3. Despite notice none appeared on behalf of the assessee. Therefore, we proceed to dispose of this appeal after hearing the Ld. DR. From a perusal of the records, it is discerned that the CPC



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Bangalore had passed the intimation order u/s 143(1) Income Tax Act, 1961 (hereinafter “the Act”) and made adjustment/additions of Rs.6,07,937/- u/s 36(1)(va) r.w.s. 2(24)(x) of the Act for late deposit of employee’s contribution to EPF/ESIC which was found to have been made beyond the due date as prescribed in the respective Acts (PF/ESIC Acts). As per the assessee (in the first round) it had deposited the employee’s contribution of PF/ESI in the relevant accounts before filing of return of income and for supporting such an action/claim of deduction has referred to the decision of Hon’ble Jurisdictional High Court in the case of Ghatge Patil Transport Ltd. (2015) 53 taxmann.com 141 (Bombay), CIT Vs. Hindustan Organics Chemical Ltd. (2014) 48 taxmann.com 421 (Bom) and various other decisions of other High Courts and Tribunals. However, we find that the case laws relied upon by the assessee cannot come to its aid in the light of the judgment of the Hon’ble Supreme Court in the case of Checkmate Services Pvt. Ltd (supra) wherein, the Hon’ble Supreme Court held that the deduction claim of an assessee/employer who deposit employee’s contribution to PF/ESIC would be allowed (as a deduction) only if it is deposited in the relevant accounts by assessee/employer within the due date as prescribed in the PF/ESI Act. And if the employer/assessee fails to deposit the amount towards employee’s contribution on or before the due date as prescribed under the EPF/ESIC Act, the assessee was not entitled to the deduction of



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employee's contribution to such funds. In the light of the Hon'ble Supreme Court decision in Checkmate Services Pvt. Ltd (supra), unless the assessee is able to show that it has deposited the employee's contribution towards PF/ESIC in the relevant fund within the due date as prescribed in the respective PF/ESIC Act, disallowance u/s 36(1)(va) of the Act as made by AO/Ld CIT(A) needs to be confirmed. And we find from perusal of impugned order that, it is undisputed fact that payment of PF & ESI amounting to Rs.6,07,937/- was not made within the due date prescribed under the PF & ESI Act, therefore action of Ld CIT(A) cannot be faulted.

4. And the only other question which remains to be examined is whether in the light of the Hon'ble Supreme Court decision in the case of Checkmate (supra) adjustment made by CPC u/s 143(1) of the Act is valid or not?. Section 143(1)(a) of the Act provides for following adjustment: -

- "i) any arithmetical error in the return;
- ii). An incorrect claim, if such incorrect claim is apparent from any information in the return;
- iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- (iv). Disallowance of expenditure "for increase in income indicated in the audit report but not taken into account in computing the total income in the return;
- (v). Disallowance of deduction claimed under "[section 10AA or under any of the provisions of Chapter VI-A under the heading "C-Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1) of section 139."



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5. Thus, while processing the return [by CPC u/s 143(1) of the Act] if it finds any incorrect claim apparent from any information in the return of income filed by the assessee, then adjustment is permissible. Here in this case, once the claim of deduction as per the law is not allowable, same can be disallowed by CPC in the intimation order u/s 143(1) of the Act. It is trite law that when the Hon'ble Supreme Court lays down the law by interpreting the same, then it relates back to the date when the law was brought into the statute by legislature. Further, clause (iv) states that, if any disallowance of expenditure has been indicated in the audit report [TAR], but not taken into account in computing the total income in the return, same also can be adjusted. The auditor in the audit report specifies the due date as prescribed u/s. 36(1)(va) of the Act and the date on which deposit has been made, then in the computation of income, the same cannot be claimed as deduction, because the law envisages that such payment is disallowable, because it has not been made within the due date.

6. Accordingly, we hold that such an adjustment is permissible while processing the return under section 143(1) of the Act. And since assessee's case was not that it had deposited the employee's contribution in the relevant funds within the due date as prescribed in PE/ESI Act, we find the impugned action of Ld. CIT(A) to be valid and we confirm the same. Therefore, the appeal filed by the assessee is dismissed.



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3. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 04/08/2023.

Sd/-  
(BR BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 04/08/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai