

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1600/Mum/2021
(Assessment Year: 2019-20)

Mr. Narayana Nippani Rao 22, Revati Nofra Near R. C. Church, Colaba, Mumbai-400 005	Vs.	ADIT, CPC Bangalore, Karnataka
PAN/GIR No. AADPR 8507 L		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Karan Vakharia
Revenue by	:	Shri Suresh Periasamy
Date of Hearing	:	29.05.2023
Date of Pronouncement	:	21.08.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2019-20.

2. The assessee has challenged the grounds of disallowance made by the Assessing Officer ('A.O.' for short)/Central Processing Centre ('CPC' for short) amounting to Rs.13,61,607/- u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act as being employees contribution to PF & ESIC deposited belatedly after the due date prescribed in the Acts but before filing of the return of income.

3. The brief facts are that the assessee is an individual carrying on the business of man power supply contract in the name of proprietary concern M/s. Nippani Narayana

Rao Security Agency. The assessee filed his return of income dated 26.09.2019, declaring total income at Rs.42,45,530/- and the same was processed u/s. 143(1) of the Act. The A.O./CPC vide intimation dated 01.05.2020 u/s. 143(1) of the Act made disallowance of Rs.13,61,607/- being the employees contribution towards PF & ESIC deposited after the due date prescribed under the relevant acts but before filing of the return of income.

4. The assessee was in appeal before the Id. CIT(A), challenging the impugned addition made by the A.O./CPC. The Id. CIT(A) vide order dated 06.08.2021 upheld the addition made by the A.O./CPC.

5. The assessee was in appeal before the Tribunal challenging the order of the Id. CIT(A) and the Tribunal vide order dated 31.03.2022 deleted the addition by relying on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT (Central) vs. Ghatge Patel Transport Ltd.* (in ITA No. 1002 & 1034 of 2012 vide order dated 14.10.2014) and *CIT v. Alom Extrusions Limited* [2009] 319 ITR 306 (SC). The Revenue filed a Miscellaneous Application recalling the said order in light of the decision of the Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd. vs. CIT* (in Civil Appeal No. 2833 of 2016 vide order dated 12.10.2022) and the Tribunal vide order dated 13.04.2023 recalled the said order in MA No. 369/Mum/2022.

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee was regularly depositing PF within 15th of every month following the month in which the salary was paid. The Id. AR further contended that the payments made before 15th of the following month from the month when the salary was

paid was to be considered as payments made within the due date specified under the relevant Acts. The ld. AR relied on the decision of the Tribunal, Madras Bench in the case of *Madras Radiators & Pressings Ltd. v. Dy. CIT* [1996] 59 ITD 515 (Trib) and *Fluid Air (India) Ltd. vs. Dy. CIT* [1997] 63 ITD 182 (Mum).

7. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and stated that these issues have already been dealt with by the Hon'ble Apex Court in the case of *Checkmate Services P. Ltd. vs. CIT* (supra) and also the decision of Hon'ble Madras High Court in the case of *Madras Radiators & Pressings Ltd.* [2003] 129 Taxmann709 (Mad) where the Hon'ble High Court had held the 15 days for deposit of the employees contribution should be reckoned from the wage month when salary was due and not from the month when the salary was paid. The ld. DR relied on the decision of Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd. vs. CIT* (supra).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee vide his submission has given the details of the salary paid during the year under consideration where some of the deposits are paid beyond the 15th of the month after the wage month. The assessee contends that as per Para 38 of the Employees Provident Fund Scheme, 1952 where it has been specified that 15 days from the close of the month has been interpreted to be the month when salary was actually paid and not the wage month. This ambiguity in reckoning the actual month when the employee's contribution was to be deposited was clearly enumerated in the decision of the Hon'ble Madras High Court in the case of *Madras Radiators & Pressings*

Ltd. (supra), wherein it was held that 15 days from the close of the month should be reckoned from the wage month and not when the salary was paid. On this note, we find no merit in the submission of the Id. AR. as far as the issue of allowability of deduction pertaining to the employees contribution to PF & ESIC deposited after the due dates prescribed under the relevant Acts nevertheless before filing of the return of income. This issue is no longer *res integra* as the decision of the Hon'ble Apex Court in the case of *Checkmate Services P. Ltd.* (supra) has elaborated extensively on the issues raised by the assessee in this appeal. The Hon'ble Apex Court in its decision has held that belated deposit of employee's contribution to PF & ESIC is no more an allowable deduction even if it was paid before filing of the return of income. From the above observation, we deem it fit to dismiss the grounds raised by the assessee.

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

Order pronounced in the open court on 21.08.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 21.08.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai