

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1481/Mum/2023
(A.Y. 2018-19)**

M/s Sri Venkateswara Cans Private Limited B Building, Unit No. 5, Tejpal Industrial Estate, Andheri Kurla Road, Sakinaka, Andheri Mumbai – 400072	Vs.	Assistant Director of Income Tax, CPC, Income Tax Department, Centralised Processing Centre, Bangalore 560500
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCS5704R		
Appellant	..	Respondent

Appellant by :	Radhakant Saraf
Respondent by :	Suresh D. Gaikwad

Date of Hearing	13.07.2023
Date of Pronouncement	26.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 09.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and law applicable thereto, the Id. CIT(A) erred in upholding the order of the ADIT-CPC (AO) without considering the merits and fact pattern of the case.
2. On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the disallowance made by the Ld.AO (CPC) while processing the return of income u/s 143(1)(a) towards expenditure indicated in the Tax Audit Report i.r.o delayed payment towards Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) u/s 36(1)(va) without appreciating the law of the

jurisdictional land that CPC has no jurisdiction of making prima-facie adjustment u/s 143(1) of the Act in a case where there are judicial precedents favoring the taxpayer/ assessee, herein the Appellant.

3. *n the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in disregarding the submission made by the Appellant during appeal proceedings wherein the Appellant explicitly submitted that the amount disallowed of Rs.14,67,715/- u/s 36(1)(va) of the Income-tax Act, 1961 (Act') on account of delayed payment towards PF and ESIC includes an amount of Rs.8,06,041/- towards employer's contribution towards PF & ESIC and thereby the employer's contribution to PF & ESIC is outside the ambit of Section 36(1)(va) of the Act.*
4. *On the facts and circumstances of the case and law applicable thereto, the Ld CIT(A) erred in upholding the disallowance of Rs.8,06,041/- under section 36(1)(va) of the Act made by the AO on account of delayed payment without appreciating the fact that the same constitutes employer's contribution and is therefore covered by the provisions of Section 43B of the Act and therefore allowable as deduction u/s 43B of the Act since the payments towards Rs.8,06,041/- have been made by the Appellant before the due date of filing of Income tax return.*
5. *On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the disallowance under section 36(1)(va) of the Act made by the AO of Rs.6,61,674/- on account of delayed payment/ deposit of Employee's contribution of PF and ESIC.*
6. *On the facts and circumstances of the case and law applicable thereto, the Ld. CIT(A) erred in upholding the disallowance u/s 36(1)(va) without considering the judicial precedents and also erred in placing reliance on the amendment made to the said section vide Finance Act 2021 without appreciating the fact that said amendment cannot be made effective retrospectively.*
7. *The Appellant craves your Honour's leave to add, alter or amend any grounds of appeal at the time of hearing or before."*

2. Fact in brief is that AO made adjustment in the intimation passed u/s 143(1) of the Act by way of disallowance of delayed remittance of employee's contribution to PF/ESIC to the amount of Rs.14,67,715/- for assessment year 2018-19 on the ground that same was paid beyond the due date.

3. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel submitted that the disallowance of Rs.14,67,715/- is also included an amount of Rs. 8,06,041/- pertaining to employer's contribution towards provident fund. The ld. CIT(A) has incorrectly sustained the whole addition inspite of specific detail provided by the assessee during the course of appellate proceedings before the ld. CIT(A) that the aforesaid amount was pertained to the employer's contribution which was deposited before the due date of filing the return of income. The ld. Counsel further submitted that out of the total disallowance an amount of Rs.6,61,674/- is only pertained to the employee's contribution of PF & ESIC and this detail was also furnished before the ld. CIT(A) as referred in the order of ld. CIT(A).

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. We consider that vide the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016 dated 12.10.2022 the entire controversy is set at rest wherein it is held that employer have to deposit the employee's contribution towards EPF/ESIC on or before the due date as prescribed under respective acts. Therefore, following the decision of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT-1 Civil Appeal No. 2833 of 2016 dated 12.10.2022 we direct the assessing officer to restrict the disallowance u/s 36(1)(va) of the Act only to the extent of employees contribution towards EPF/ESIC to the amount of Rs.6,61,674/- after verification of the detail filed by the assessee and delete the addition which is made on account of employer's contribution towards EPF/ESIC as claimed by the assessee of Rs.8,06,041/- which was deposited before the due date of filing of Income Tax return. Therefore,

ground of appeal of the assessee are partly allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26.07.2023

Sd/-

Sd/-

(Aby T Varkey)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 26.07.2023

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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