

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.143/Asr/2023  
Assessment Year: 2017-18**

Ess Ess Kay Engineering Co. Pvt. Ltd. Factory Area, Jalandhar. [PAN: AAACE5057G] <b>(Appellant)</b>	<b>Vs.</b>	NFAC, Delhi/C/o Asstt. Commissioner of Income Tax Circle-4, Jalandhar.  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. S. K. Vatta, CA.</b>
<b>Respondent by</b>	<b>Sh. Ravinder Mittal, Sr. DR</b>

<b>Date of Hearing</b>	<b>22.08.2023</b>
<b>Date of Pronouncement</b>	<b>25.08.2023</b>

**ORDER**

**Per:Anikesh Banerjee, J.M.:**

The instant of appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi [in brevity the 'CIT (A)'] order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] for A.Y.

2017-18. Originally the order of the CPC, Bangaluru, [in brevity the AO] was framed u/s 143(1) by disallowing the payment u/s 36(1)(va) r.w.s. 43B of the Act.

2. The assessee has raised the following grounds:

*“1. That the learned CIT(Appeals), NFAC, was wrong, unjustified both on facts and in law to have upheld orders passed u/s 143(1) of the Income Tax Act by CPC for disallowing/additions made in respect of delayed payments of ESI and EPF OF Rs. 1,04,83,057/-, which amounts was duly stood paid u/s 43B of the Act, before the due date of filing of the return of Income u/s 139(1) of the Income Tax Act since the intimation order as passed was on 30.12.2019 before any adverse judgement of the jurisdictional High Court, including the Hon'able Supreme Court in the case of CHECKMATE SERVICE PRIVATE LIMITED vs CIT-1,(2022) Taxman. Com 178(SC) vide their order of 12.10.2022, and as such the intimation order as passed for making the said disallowances/additions was without any basis and premises.*

*2. That the Worthy CIT(A) NFAC, was wrong & unjustified, both on facts and in law, to have passed orders upholding additions/disallowance of Rs. 1,04,83,057/-, in respect of disallowance as made u/s 36(l)(va) of the Act since failed to consider and appreciate, in right perspective, the followings:-*

*a) Ignoring the facts and submissions that the impugned order u/s 143(1) dated 18.01.2019 in respect of the additions/disallowances having got merged with final order u/s 143(3) of the Act, dated 30.12.2019, with the impugned disallowances/additions;*

*b) That pursuing an application u/s 154 of the Income Tax Act, for the mistake apparent, the Learned A.O., DCIT (IV) Jalandhar vide his orders 12.02.2020 already passed due rectification orders u/s 154 deleting/rectified the impugned additions/disallowance of Rs. 1,04,83,057/- and due tax effect adjustment carried in consequent thereof, and as such there remained, no pending subsisting dispute/ cause of action left, in respect of the said disallowances/additions;*

*3. That the worthy CIT(A), was also wrong, unjustified, both on facts and in law, to have passed orders confirming the impugned additions/disallowances on the presumptions that the A.O. may subsequently amend the said order u/s 154 of the Act, ignoring the specific application dated 25th March, 2023, by the assessee with the request and pray that the impugned appeal fixed for hearing on 28th March, 2023 is hereby withdrawn for all intent and purposes, since no pending subsisting dispute/ cause of action left, in respect of the said*

*disallowances/additions, in view of the rectification orders of 12.02.2020, already passed u/s 154 of the Act, in favour of the assessee.*

*4. That the impugned additions/disallowances of Employee's share of ESI/EPF was otherwise eligible for deduction u/s 37 of the Act being a direct charge/expenditure incurred in due course of carrying on business activities.*

*5. The assessee craves to add, modify, delete any grounds of appeal during the appeal proceedings.”*

3. Brief fact of the case is that the assessee filed the return u/s 139(1) thereafter return was processed u/s 143(1) and the disallowance was made u/s 43B and section 36(1)(va) for delay payments of ESI & PF. The case was further assessed and order was passed u/s 143(3). The same addition was added u/s 43B and 36(1)(va) for delay in payment of ESI and EPF amount to Rs.1,04,83,057/-. The assessee filed a rectification petition u/s 154. The rectification was allowed and the addition was deleted. The assessee challenged intimation u/s 143(1) before the Id. CIT(A). The Id. AR of the assessee mentioned that the order u/s 143(3) protruded

the intimation u/s 143(1). After the order U/s 143(3), the intimation U/s 143(1) has no locus standi. So, the assessee was tried to withdraw the 1<sup>st</sup> appeal, filed against the order U/s 143(1) of the Act. But the ld. CIT(A) without allowing the assessee's prayer passed the order and upheld the addition after allowing the relief amount to Rs.94,65,114/-. The ld. CIT(A) considering the order of the Hon'ble Apex Court in the case of **Checkmate Services P. Ltd. vs. CIT, 143 Taxmann.com 178 (SC)** has rejected the assessee's ground. Being aggrieved assessee filed an appeal before us.

4. The ld. counsel for the assessee has filed written submissions which are kept in the record. The ld. AR of the assessee first argued and placed that the order 143(3) protruded the order passed u/s 143(1). So, there is no demand on account of the assessee. Therefore, the appeal order is non maintainable.

5. The ld. DR vehemently argued and relied on the CIT(A)'s order. The relevant para 5.18 to 7 are reproduced as below:

*“5.18. Further, the CIT(A), NFAC has decided the same issue against the appellant's own case for AY 2019-20 vide order dated 26.12.2022 and for AY 2020-21 vide order dated 20.04.2023.*

5.19. Further, the appellant submitted that no cause of action left as the impugned disallowance has been deleted by the AO in the order u/s. 154 dated 12.02.2020 by amending the order u/s. 143(3) for AY 2017-18. Therefore, he submitted that impugned appeal is hereby withdrawn. However, the rectification order dated 12.02.2020 is not a subject matter of this appeal. Moreover, the AO may subsequently amend the said order u/s. 154 as this issue of disallowance u/s. 36(1)(va) has been settled by the decision of the Hon'ble Apex Court in the case of Checkmate Services (P.) Ltd. v. C/T (supra). Therefore, this appeal is decided on the merit as above.

5.20. In view of the above discussion and respectfully following above decision of Hon'ble Apex Court, the decisions of the Hon'ble ITATs and decision of CIT(A), NFAC appellant's own case for AY 2019-20 and AY 2020-21, the deduction for the Employee's contribution to the EPF/ESI etc. will only be available if the amount is deposited before the due dates prescribed in the concerned statutes as specified in Section 36(1)(va) of the Act and NOT before the due date for filing of return u/s 139(1) of the Act as per Section 43B of the Act. The disallowance of deductions claimed by the appellant on account of payments of employee's contribution towards Provident Fund and ESI fund amounting to Rs. 94,65,114/-, which were made after the dates

*prescribed in the concerned statutes, is, therefore, upheld. Accordingly, these grounds 1 & 2 are dismissed.*

*6. In ground no 3, the appellant craved leave to amend, alter or delete any of the grounds of appeal before or at the time of hearing of appeal. No such option has been exercised by the appellant at the appellate stage and, therefore, this ground is treated as dismissed.*

*7. In the result, the appellant's appeal is Dismissed."*

6. We heard the rival submission and relied on the documents available in the record. The issue is well settled related to delayed payment of ESI and PF as per the due date specified in the respective acts. The 143(3) order is a different process which cannot cast a shadow over the intimation u/s 143(1) of the Act. Every assessment proceeding is a separate and have no coherent relation with others. The demand raised U/s 143(1) cannot be defused by the order U/s 143(3) in same assessment year.

So, the ground no. 2 of the assessee is dismissed.

6.1 Related to delayed payment of PF and ESI for violation of section 43B and Section 36(1)(va) are already settled by the same bench in the case of **Navodaya Times Private Ltdvs DCIT, I.T.A. No.192/Asr/2022, Date of Pronouncement**

**31/01/2023.** We respectfully followed the order of the **Hon'ble Supreme Court** in the case **Checkmate Services P. Ltd. (supra)**. We are not interested to interfere in the impugned appeal order. The action of revenue is in accordance with the law laid down by Hon'ble Supreme Court in the cited decision.

Accordingly, the ground of the appeal of the assessee is dismissed.

7. In the result, the appeal bearing **ITA No. 143/Asr/2023** is dismissed.

**Order pronounced in the open court on 25.08.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order