

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-GUWAHATI 'e-COURT', KOLKATA  
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 2 & 3/GAU/2022  
Assessment Years: 2018-2019 & 2019-2020**

***Dilip Pathak,.....Appellant  
C/o. S.N. Ghosh & Associates, Advocates,  
2, Garstin Place, 2<sup>nd</sup> Floor, Suite No. 203,  
Opp. Hare Street, Kolkata-700001  
[PAN:AMFPP6694J]***

**-Vs.-**

***Assistant Commissioner of Income Tax,....Respondent  
Circle-2, Guwahati,  
Aayakar Bhawan,  
G.S. Road, Christian Basti,  
Guwahati-781005, Assam***

**Appearances by:**

*N o n e, appeared on behalf of the assessee*

*Shri Banjul Barthakur, D.R., appeared on behalf of the  
Revenue*

Date of concluding the hearing : August 29, 2023

Date of pronouncing the order : August 29, 2023

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present two appeals are directed at the instance of assessee against the orders of ld. Commissioner of

Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 15<sup>th</sup> May, 2021 passed in A.Y. 2018-19 and dated 13<sup>th</sup> May, 2021 passed in A.Y. 2019-20.

2. Grounds of appeal taken by the assessee in both the years are common. The solitary grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the disallowance of Rs.22,54,860/- in A.Y. 2019-20 and Rs.48,20,810/- in A.Y. 2018-19. These disallowances were made by the ld. Assessing Officer on the ground that the employees' contribution received by the assessee by way of a deduction from the salaries of the employees were not deposited in the P.F. & ESI Accounts within the due date provided in P.F. & ESI Acts. Therefore, the assessee is not entitled to claim deduction of these amounts. The disallowance has been made with the help of section 36(i)(va) read with section 2(24)(x) of the Income Tax Act.

3. Dissatisfied with the disallowance, the assessee carried the matter in appeal before the Tribunal. The Tribunal vide its order dated 7<sup>th</sup> July, 2022 deleted the disallowance by observing that the payments were made before the due date of filing of the return and as per the existing position of law laid down by the Hon'ble Calcutta High Court in the case of CIT -vs.- Vijayshree Limited reported in 43 taxmann.com 396.

4. After sometime, this issue of allowability of the employees' contribution on account of its payment before the due date of filing of the return travelled to the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178. The Hon'ble Supreme Court has held that as per section 36(1)(va) read with section 2(24)(x), such contribution is to be paid within the due date of the limitation provided under P.F. & ESI Acts and if an assessee fails to make the payment, then, deduction of such amount will not be allowed to the assessee. The Department has filed Miscellaneous Applications No. 6 & 7/GTY/2022 before the Tribunal. The Tribunal after hearing the parties had allowed the applications of the Department vide order dated 10<sup>th</sup> August, 2023. It is pertinent to observe that Hon'ble Supreme Court in the case of ACIT -vs.- Saurashtra Kutch Stock Exchange Limited reported in 305 ITR 227 has laid down that subsequent decision of the Hon'ble Jurisdictional High Court as well as of the Hon'ble Supreme Court would brand the order of the Tribunal as suffering from apparent error if it runs contrary to the proposition of law laid down by the Hon'ble Jurisdictional High Court as well as of the Hon'ble Supreme Court on the point of law. In other words, the subsequent decision of the Hon'ble Supreme Court could make the prior order of the

Tribunal as suffering from patent error. Thus the order of the Tribunal was suffering from apparent error because it has accepted the position of law contrary to the law laid down by the Hon'ble Supreme Court. Accordingly Tribunal has allowed those Miscellaneous Applications, recalled its earlier order and restore these appeals for fresh hearing.

5. Fresh notice of hearing was given to the assessee but no one has come present on behalf of the assessee. With the assistance of ld. D.R., we have gone through the record carefully. Since the assessee failed to make the payment of employees' contribution in the P.F. & ESI accounts within the due date of limitation provided under those Acts, therefore, it is not entitled for deduction as per the law laid down by the Hon'ble Supreme Court. Accordingly these appeals on this point are devoid of any merit, hence dismissed.

**6. In the result, both the appeals of the assessee are dismissed.**

Order pronounced in the open Court on 29.08.2023.

<b>Sd/-</b>	<b>Sd/-</b>
<b>(Rajesh Kumar)</b>	<b>(Rajpal Yadav)</b>
<b>Accountant Member</b>	<b>Vice-President</b>
<b>Kolkata, the 29<sup>th</sup> day of August, 2023</b>	

- Copies to :* (1) *Dilip Pathak,*  
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*Circle-2, Guwahati,*  
*Aayakar Bhawan,*  
*G.S. Road, Christian Basti,*  
*Guwahati-781005, Assam*
- (3) *Commissioner of Income Tax (Appeals),*  
*National Faceless Appeal Centre, Delhi;*
- (4) *Commissioner of Income Tax- ,*  
(5) *The Departmental Representative*  
(6) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***