

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H': NEW DELHI**

**BEFORE,  
SHRI G.S.PANNU, PRESIDENT  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1457/Del/2023  
(ASSESSMENT YEAR 2019-20)**

Ultra Tech Engineers A-503, Shrinath Orchid Mala Road, Kota Junction Kota, Rajsthan  PAN-AABFU 5279L	Vs.	Income Tax Officer Ward-2(3)(3) Bulandshahr
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Nirbhay Mehta, Advocate
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	18/09/2023
Date of Pronouncement	20/09/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 14/03/2023 for Assessment Year 2019-20.

2. Grounds taken in this appeal are as under:

*“1. That on the facts and circumstances of the case and in law, the order passed by the National Faceless Appeal Centre (NFAC) is bad in law and contrary to the facts of the case.*

*2. That on the facts and circumstances of the case NFAC was not justified in upholding the erroneous order passed by AO, CPC in making an addition of Rs.32,26,765/- u/s 36(1)(va) on account of late deposit of EPF/ESI through passing an order u/s 143(1) of the IT Act without following the procedure as laid down under the IT Act.*

*3. That on the facts and circumstances of the case, NFAC CIT(A) erred in upholding the order passed by AO, CPC u/s 143(1).*

*4. That on the facts and circumstances of the case NFAC CIT(A) erred in not giving relief for EPF/ESI that was deposited duly before time amounting to Rs.13,61,143/, which is apparent from the face of impugned order itself.*

*5. That on the facts and circumstances of the case and in law NFAC CIT(A) is not justified in confirming the disallowance u/s 36(1)(va) by overlooking the settled proposition that no adjustment u/s 36(1)(va) is permissible on debatable issues. Reliance in this regard is placed upon ITAT orders in the case of Garg Heart Centre & Nursing Home Pvt. Ltd. in ITA No.1700/D/2022 and Paris Elysees Pvt. Ltd. in ITA No. 357/D/2022.*

*6. The assessee craves leave to add, alter, amend, withdraw or substitute the grounds of appeal on or before the hearing.”*

3. Brief facts of the case are that, an order u/s 143(1) dated 20/02/2022 passed by A.O./CPC for the Assessment Year 2019-20 by making an addition of Rs. 32,26,765/- u/s 36(1) (va) of the Act on account of late deposit of EPF/ESI. The assessee filed an appeal before the CIT(A) by challenging the order of the A.O, CPC dated 22/02/2020 and the ld. CIT(A) vide order dated 14/03/2023 dismissed the Appeal filed by the assessee by relying on the Judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt.

Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, dated 12/10/2022. Aggrieved by the order of the CIT(A), the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the assessee will not be pressing Ground No. 1,2, 3 & 5 of the Grounds of Appeal as the same is covered against the Assessee as per the Judgment of Hon'ble Supreme Court in the case of Checkmate Services (Supra) and submitted that the assessee will be pressing only Ground No. 4 and contended that an amount of Rs. 13,61,143/- was duly deposited before the due dates mentioned in the respective Acts but the A.O. and the CIT(A) failed to examine the same, therefore, submitted that the issue involved in Ground No. 4 may be remanded to the file of the A.O. for de-novo adjudication.

5. Per contra, the Ld. Departmental Representative submitted that the issue of payment of late deposit of EPF and ESIC has already been settled by the Hon'ble Supreme Court in the case of Checkmate Services (supra), therefore, Grounds of appeal of the assessee are not maintainable and relying on the orders of the Lower Authorities, sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. It is the contention of the Ld. Assessee's Representative that an amount of Rs. 13,61,143/- has been deposited before the due dates mentioned in the respective Act and the same has not been considered by the A.O./CPC.

Considering the above submission of the Ld. Assessee's Representative, we deem it fit to restore the matter to the file of the A.O. to verify as to whether the said amount of Rs. 13,61,143/- was deposited before the due dates mentioned in the respective enactments and decide the issue in accordance with law. Accordingly, we partly allow the Ground No. 4 of the assessee for statistical purpose.

7. In the result, Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 20<sup>th</sup> September, 2023

Sd/-  
**(G.S.PANNU)**  
**PRESIDENT**

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated: 20/09/2023

*Pk/R.N, Sr.ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI