

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos.14 & 15/Jab/2023
(ASSESSMENT YEARS- 2017-18 & 2018-19)**

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| Mehrotra Buildcom Pvt.Ltd., 9, Industrial Estate, Rewa Road, Satna (M.P)-485001. | vs | Asst.CIT, Circle-Satna- 485001. |
| (Appellant) | | (Respondent) |
| PAN No. AAECM9105D | | |

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|------------------------------|-------------------------|
| Assessee By | Smt. Uma Parashar, Adv. |
| Revenue By | Shri Shiv Kumar, Sr.DR |
| Date of hearing | 20/09/2023 |
| Date of Pronouncement | 22/09/2023 |

ORDER

PER OM PRAKASH KANT, A.M.:

These two appeals by the assessee are directed against the two separate orders, both dated 30.12.2022, passed by Ld. Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)"] for assessment years 2017-18 & 2018-19 respectively. Being common issues involved in both these appeal, same were heard together and disposed off for the sake of convenience.

The grounds raised by the assessee in ITA No.14/Jab/2023 are reproduced as under:-

1. *“The learned CIT(A) has erred in law and on facts of the case for confirming the addition of Rs.4843302/-on account of delayed payment of EPF & ESI under section 36 of the Income Tax ACT 1961.The disallowance is not justified it is contrary to the provisions of section 43B,the entire addition should be quashed.*
 2. *The addition has been made without affording opportunity to the assessee is devoid of natural justice should be deleted.*
 3. *The learned CIT(A) is not justified in holding that explanation added to section 36(1)(va) w.e.f.01.04.2021 shall have retrospective operation. The explanation creates a liability and specifically made operative from Assessment Year 2021-22 cannot have retrospective operation.*
 4. *That section 36(1)(va) and section 43B and conflicting and ambiguous. The conflict should be resolved in favor of the assessee.*
 5. *Without prejudice to the above grounds the CPC and CIT Appeal is not justified in disallowing the employers contribution that is covered by section43(B). The disallowance of employers contribution may please be allowed.*
 6. *The applicant reserves his right to raise additional ground or grounds of appeal those may arise at the time of hearing of this appeal.”*
2. We have heard rival submission of the parties and perused the relevant material on record. The material facts for disposal of the controversy raised in grounds of appeal for AYs 2017-18 and 2018-19, in relation to deduction for payments made to employees state

insurance (“ESI”)/ provident fund (“PF”) are that the disallowance made by the Assessing Officer (in short “AO”) in AY 2017-18 consists of employer’s contribution as well as employee’s contribution deposited after the due date under the relevant Acts and for AY 2018-19, disallowance consist only of employee’s contribution. Before us, Ld. Counsel for the assessee submitted that in AY 2017-18, employer’s contribution deposited after due date under the relevant Act may be considered under the provisions of section 43B of the Income Tax Act, 1961 (in short “the Act”). In AY 2018-19, the total disallowance is in respect of employee’s contribution to ESI/PF deposited after due date under the relevant Act. We find that in view of the decision 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**, the employee’s contribution to ESI/PF deposited after due date under the relevant Act, is not allowable as deduction under the provisions of section 36(1)(va) of the Act and therefore, said part of the contribution claimed in AYs 2017-18 & 2018-19 disallowed by the AO, is sustained. However, the employer’s contribution to ESI/PF paid after due date under the relevant Act but paid before the due date of the filing of the return of income, is allowable as per provision of section 43B of the Act, and therefore, relevant grounds of appeal of

the assessee for AY 2017-18 is restored back to the file of AO for verification and deciding in accordance with law. The grounds raised by the assessee for AY 2017-18 are allowed for statistical purposes, whereas , the grounds raised by the assessee for the AY 2018-19 are dismissed.

4. In the result, the appeal filed by the assessee for the AY 2017-18 is allowed partly for statistical purposes and appeal filed by the assessee for AY 2018-19 is dismissed.

Order pronounced in the open Court on 22/09/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jabalpur Bench