

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A" : PUNE

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

ITA. Nos. 870 & 890/PUN./2023  
Assessment Year: 2020-2021

<b>Lear India Engineering LLP</b> Gat No. 426/6/7,8,9 9 Mahulunge, Tal. Khed, Pune - 410501	vs.	<b>Assistant Director of Income Tax</b> CPC, Pune
<b>Lear India Engineering LLP</b> Gat No. 426/6/7,8,9 9 Mahulunge, Tal. Khed, Pune - 410501	&	National Faceless Penalty Centre OR DCIT, Circle-8, Pune
PAN: AAHFL9362K		
(Appellant)		(Respondent)

For Assessee :	Ms. Hirali Desai & Mr. Hardik Nirmal, CA
For Revenue :	Shri Ramnath P Murkude, DR

Date of Hearing :	31.08.2023
Date of Pronouncement :	22.09.2023

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

These assessee's twin appeals ITA Nos. 870 & 890/Pun./2023, for A.Y. 2020-21, arise against the National Faceless Appeal Centre (NFAC)'s separate DINs & Order Nos. ITBA/NFAC/S/250/2023-24/1053552664(1) & ITBA/NFAC/S/250/2023-24/1053783386(1); dated 5<sup>th</sup> & 19<sup>th</sup> June, 2023, in proceedings u/ss.250 r.w.s. 143(1) & 250 r.w.s. 270A of the Income Tax Act, 1961 ["In short Act"]; respectively.

2. Heard both the parties at length. Case files perused.
3. We advert to the assessee's first and foremost "quantum appeal" ITA No. 870/Pun./2023 wherein its sole substantive ground seeks to reverse both the learned lower authorities' action invoking Section 36(1)(va) disallowance / addition of employees' contribution to Provident Fund involving a sum of Rs.52,68,646/- on the ground that the same had been deposited beyond the "due date" in the respective statutes. Suffice to say, the instant sole issue is hardly res integra anymore once hon'ble apex court's landmark decision in *M/s. Checkmate Services Pvt. Ltd. vs. CIT* [2022] 143 taxmann.com 178 (SC) has decided the same in Revenue's favour.
4. Next comes equally important aspect of quantification of the impugned disallowance. The assessee's case all along; as per its tax audit report forming part of the case records, at page 41 is that it had very well deposited a part of the impugned disallowance amount of Rs.27,90,996/- on 09.04.2020 whereas the "due date" as per the respective statute was 15.05.2020. The Revenue could hardly dispute this clinching factual aspect during the course of hearing before us. Faced with this situation, we grant part relief to the assessee to the tune of Rs.27,90,996/- out of the impugned 36(1)(va) disallowance of Rs.52,68,646/- (supra) in very terms. Necessary computation shall follow as per law. The assessee's instant quantum appeal ITA No. 870/Pun./2023 stands partly accepted.

5. Next comes the assessee's latter penalty appeal ITA No. 890/Pun./2023 challenging correctness of both the lower authorities' action invoking Section 270A penal action amounting to Rs.50,41,430/-. There is hardly any dispute that the same pertains to the assessee's health and education cess deduction claim of Rs.52,26,987/- made during the course of assessment; which in turn, stood disallowed in the Assessing Officer's assessment framed on 26.09.2022, in light of the statutory amendment in Section 40(a)(ii) Explanation-3 with retrospective effect from 01.04.2005. This is thus an instance wherein the department has invoked Section 270A penalty proceedings against the assessee in light of the retrospective statutory amendment only. Hon'ble jurisdictional high court in [2013] 33 taxmann.com 332 (Bom.) CIT vs. Yahoo India (P.) Ltd. holds that a penalty based on such a retrospective statutory amendment is not sustainable in law.

6. This is indeed coupled with the fact that both the learned lower authorities have although held the assessee to have under reported its income in consequence of mis-reporting, they have nowhere specified any of the statutory limbs in clauses (a) to (f) of sub-section 9 in Section 270A of the Act which is not sustainable in light of Schneider Electric South East Asia (HQ) Pte Ltd. vbs. ACIT (2022) 443 ITR 186 (Delhi). We therefore reject the Revenue's vehement contentions supporting the impugned penalty. The assessee succeeds in its instant latter appeal ITA No.890/Pun./2023. Ordered accordingly.

7. To sum up, the assessee's former appeal ITA No.870/Pun./2023 is partly allowed and its latter appeal ITA No.890/Pun./2023 is allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 22.09.2023

**Sd/-**

[DR. DIPAK P. RIPOTE]  
ACCOUNTANT MEMBER  
Pune, Dated 22.09.2023  
S.K.SINHA

**Sd/-**

[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

True Copy

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-V, Pune
4.	The CIT, Nashik
5.	D.R. ITAT, Pune "A" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar,  
ITAT, Pune Benches, Pune.