

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

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

**ITA Nos. 8 & 9/Jab/2023
(ASSESSMENT YEARS- 2019-20 to 2020-21)**

Ultra Clean and Care Services P.Ltd., 301/302, Sneha Vihar Apartments, Jabalpur (M.P)	vs	Asst.CIT, Circle-2(1), Jabalpur
(Appellant)		(Respondent)
PAN No. AABCU0336M		

Assessee By	Shri G.N.Purohit, Sr. Advocate
Revenue By	Shri Shive Kumar, Sr.DR
Date of hearing	21/09/2023
Date of Pronouncement	22/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

These two appeals by the assessee are directed against the separate orders, both dated 22.11.2022 passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short "Ld.CIT(A)"] for the assessment year 2019-20 to 2020-21 respectively. The issues involved in both the appeals are common, therefore, both the appeals were heard together and disposed off by way of this consolidated order for convenience.

2. Grounds are identical in both the appeals and for the sake of brevity, grounds in ITA No.8/Jab/2023 for the Assessment Year 2019-20 are reproduced as under:-

1. *“That the learned CIT Appeal has erred in law and on facts of the case in not allowing proper opportunity of hearing to the assessee. The appeal order passed may please be quashed in toto.*

2. *The learned CIT(A) has erred in law and on facts of the case for confirming the addition of Rs.2571720/- 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.*

3. *The addition has been made without affording opportunity to the assessee is devoid of natural justice should be deleted.*

4. *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.*

5. *That section 36(1)(va) and section 43B and conflicting and ambiguous. The conflict should be resolved in favor of the assessee.*

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.”*

3. Grounds raised in both the appeals relate to disallowance of deduction for contribution to ESI/PF.

4. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the relevant material available on record. Before us, Ld. counsel for the assessee submitted that in AY 2019-20, the disallowance include employer’s contribution to ESI/PF also. Ld. counsel for the assessee has provided details of employee’s share out of ESI/PF paid after due date under relevant Acts which amount to Rs.17,12,991/-. The relevant details which are reproduced as under-

S.No.	Actual Date	Due date	ESIC Challan Amount	Employee Share o.75%	Employer share 3.25%	Amount
1.	23.10.2020	15.05.2019	215691	40442.06	175248.94	215691
2.	23.10.2020	15.06.2019	219242	41107.88	178134.13	219242
3.	25.10.2019	15.07.2019	167983	31496.81	136486.19	167983
4.	28.08.2019	15.08.2019	875	164.06	710.94	875
5.	28.08.2019	15.08.2019	77843	14595.56	63247.44	77843
6.	27.09.2019	15.09.2019	71592	13423.50	58168.50	71592
7.	27.11.2019	15.10.2019	80483	15090.56	65292.44	80483
8.	27.11.2019	15.11.2019	80557	15104.44	65452.56	80557
9.	14.04.2020	15.12.2019	103713	19446.19	84266.81	103713
10.	14.04.2020	15.01.2020	91945	17239.69	74705.31	91945
11.	24.07.2020	15.02.2020	93715	17571.56	76143.44	93715
12.	24.07.2020	15.05.2020	89930	16861.88	73068.13	89939
13.	17.04.2020	15.05.2020	90953	17053.69	73899.31	90953
	Total		259597.88			

5. Ld. Counsel for the assessee accordingly, submitted that disallowance for employee's share of contribution for ESI/PF may be disallowed in view of the decision of the Hon'ble Supreme Court in the case of ***Checkmate Services P. Ltd. vs Commissioner of Income Tax-1 in Civil Appeal no. 2833 OF 2016*** . Regarding the balance amount of disallowance, he submitted that same relates to employer's contribution to ESI/PF, which is eligible for allowance u/s 43B of the Act. We agree with the submissions of the ld counsel for the assessee. Accordingly, the issue in dispute for AY 2019-20 is restored back to the AO for deciding employer's share of the contribution to ESI/PF for allowing in accordance with the provision of section 43B of the Income Tax Act, 1961 (in short "the Act") whereas employee's contribution to ESI/PF to be considered in accordance with the decision of Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd. vs Commissioner of Income Tax-1 (supra)*.

6. In AY 2020-21, entire contribution pertains to employee's share to ESI/PF and therefore, same is not eligible for deduction u/s 36(1)(va) of the Act hence, the AO is directed to disallow the same in accordance with the decision of the Hon'ble Supreme Court in the case of *Checkmate Services P. Ltd. vs Commissioner of Income*

Tax-1 (supra). Both the appeals filed by the assessee are accordingly, restored to the AO for deciding afresh in accordance with law.

7. In the result, both appeals filed by the assessee are allowed for statistical purposes.

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