

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH :DB
(VIRTUAL HEARING AT NEW DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.65/Jodh/2022
Assessment Year: 2018-19**

The Nagaur Central Cooperative Bank Ltd., 1, NCCB Bank, Gandhi Chowk, Nagaur PIN: 341001 (PAN:AAAAT7574R)	Vs.	ITO, Ward-1, Nagaur Additional/Joint/Deputy/ACT, ITO, National e-Assessment Centre, Delhi.
(Appellant)		(Respondent)

Present for:

Appellant by : N O N E
Respondent by : Shri Rajiv Mohan, JCIT-DR

Date of Hearing : 12.09.2023
Date of Pronouncement : 12.09.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of learned Commissioner of Income-tax(Appeals) National Faceless Appeal Centre(NFAC), Delhi - Appeal No. NFAC/2017-18/10023831 dated 17.03.2022 against the order under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 03.02.2021 passed by

the AO, National e-Assessment Centre, Delhi (NeAC), Delhi for the assessment year 2018-19.

2. When the appeal was called for hearing, none was present on behalf of the assessee to represent the case. However, a letter dated 12.09.2023 on behalf of the assessee has been filed in the Registry seeking adjournment on the ground that the learned counsel is pre-occupied , therefore, he is unable to attend the hearing. The ground seeking adjournment is unsatisfactory and the said application is declined.

3. Since the sole issue in the present appeal is in respect of disallowance made towards contribution to provident fund (PF) and Employees State Insurance (ESI) by the employees which were deposited after the due date prescribed under the respective Acts, the issue being covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)*, we dispose of this appeal, ex parte qua the assessee.

4. Brief facts of the case are that assessee filed its return of income on 01.10.2018 reporting total income at Rs.1,74,26,030. Assessee is engaged is District Co-operative Central Bank, Administered by Registrar

of Co-operative Society where funding is provided by NABARD for advancement of agricultural sector to the farmers. Assessment under Section 143(3) was completed whereby a disallowance of Rs.13,75,021 was made on account of delay in deposit of employees contribution towards PF and ESI. Aggrieved, assessee went in appeal before the learned Commissioner (Appeals) who confirmed the disallowance so made. Aggrieved, assessee is in appeal before the Tribunal.

5. On the aforesaid issue relating to disallowance in respect of delay in deposit of employees' contribution to Provident Fund, the issue is squarely covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act, 1961.*" Hon'ble Supreme Court has held that by virtue of section 2 (24) (x) of the Act, the amounts received or deducted by an employer u/s 36(1)(va), it retains its character as an income (albeit deemed) by virtue of section 2 (24)(x) , unless the condition stipulated by Explanation to section 36(1)(va) are satisfied i.e. depositing such amount received or deducted from the employee on or before the due date. It is further held that there is a marked distinction between the nature and

character of the two amounts - the employer's liability is to be paid out of its income, whereas, the second is deemed an income, by definition, since it is the deduction from the employee's income and held in trust by the employer. The Hon'ble Supreme Court thus held that the conditions of section 43B prescribing the due date as the date of filing of return of income in case the employers' contribution towards ESI/PF would not be applicable in case the employees' contribution as provided u/s 36(1)(va) of the Act and that the due date in respect of deposit of employees' contribution would be such as prescribed u/s 36(1)(va) of the Act.

6. In view of above discussion, we do not find any merit in the appeal of the assessee and the same is hereby dismissed.

7. In the result, appeal of the assessee is dismissed.

Order is pronounced in the open court on 12.09.2023.

**Sd/-
(Saktijit Dey)
Vice-President**

Dated: 12 September, 2023

Mohan Lal

**Sd/-
(Girish Agrawal)
Accountant Member**

Copy forwarded to:

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

By Order

Assistant Registrar