

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.385/Del./2023
(ASSESSMENT YEAR : 2018-19)**

Prakul Luthra,
E-588, Flat No.205,
Greater Kailash – II,
New Delhi – 110 048.

vs.

ITO, Ward 30 (1),
New Delhi.

(PAN : ACNPL5270A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Agarwal, Advocate
Shri Shrey Jain, Advocate
REVENUE BY : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 05.10.2023
Date of Order : 11.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
10.01.2023 pertaining to assessment year 2018-19.

2. Grounds of appeal taken by the assessee read as under :-

“1. That having regard to the facts and circumstance of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the claim made by the assessee u/s 154 of the Act and that too without any basis and without appreciating/considering the facts and circumstances of the case.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in not allowing the claim made by the assessee u/s 154, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.6,81,780/- on account of employee's contribution to PF and ESI and that too by recording incorrect facts and findings and without observing the principles of natural justice.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.6,81,780/- on account of employee's contribution to PF and ESI, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and actual ground.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A and 234C of Income Tax Act, 1961.”

3. The issue involved in the appeal is regarding disallowance of Employees Contribution to ESI/PF. The Ld. Counsel for the assessee fairly submitted that the issue involved in the above appeal is covered against the assessee by the judgment of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, vide order dated 12/10/2022, wherein it is held that if the Employee's contribution to PF/ESI has been paid beyond the time prescribed under the relevant PF Act, then same is not allowable u/s 43B of the Income-tax Act, 1961 (for short 'the Act').

4. Further, the Ld. Counsel for the assessee contended that the Employer would be at liberty to make payment of contribution within 15 days from the end of the month during which the disbursement of salary

is actually made and the contribution to the PF/ESI are thus generated and contended that the Assessee paid salary/remuneration to the staffs for the month in the subsequent month, therefore employer is required to deposit PF/ESI Contribution within 15 days from the close of every month. The Ld. Counsel for the Assessee relied on the following judicial pronouncements in support of her contentions:

- i). ACIT v. M/s VVDN Technologies Pvt. Ltd. in ITA no.164/Del/2023 dated 04.07.2023 (ITAT Delhi)
- ii). Aroma Aromatics & Flavours v. ACIT ITA no. 1634/Del/2020 dated 17.03.2023(ITAT Delhi)
- iii). Prime Comfort Products Pvt. Ltd. v. ACIT ITA no.530/Del/2023 dated 26.04.2023 (ITAT Delhi)
- iv). The Master Polishers v. ADIT in ITA no. 252/Mum/2023 dated 26.04.2023 (ITAT Delhi)
- v). Mintri Tea Co. Pvt. Ltd. v. CIT reported in 2009 319 ITR 264 (ITAT Delhi)
- vi). Peerless General Finance & Investment Co. Ltd. Vs. CIT reported in 228 CTR 72 (ITAT Delhi)

5. The Ld. Counsel for the assessee further requested to restore the issue to the file of A.O. with a direction to find out 'every month' specified in Provident Fund Scheme as to whether the same is for the month for which salary/wages are 'due' or month for the 'payment' is referred to.

6. Per contra, the Ld. Departmental Representative submitted that the Hon'ble Supreme Court in the case of Checkmate Services (supra) held that the Employees Contribution deposited after respective due date cannot be allowed as deduction, therefore, the issue involved in the present appeal requires to be decided in favour of the Revenue.

7. We have heard both the parties and perused the records. The provision of the Income Tax Act provides for payment of the Employees Contribution of ESI/PF on or before the due date prescribed under the relevant PF Act. The Hon'ble Supreme Court in the case of Checkmate Services (supra) categorically held that the Employees Contribution deposited after respective due date mentioned in the PF Act cannot be allowed as deduction u/s 36(1)(va) of the Act.

8. Now the issue in dispute in the present appeal is in respect of the actual 'due date prescribed'. It is the case of the Assessee that the salary/remuneration payment to staff for the month was paid in subsequent months preferably in the first week of the next month. For example, the salary for the month of September, 2023 will be paid in the first week of October, 2023, thus, the Employer is required to deposit the PF/ESI Contribution within 15 days of the close of every month. As per the assessee, the due date has to be calculated within 15 days from the close of the month in which 'payment is made to the employee'. But

according to the Revenue, the Contribution has to be deposited within 15 days from the close of the month for which salary/wages of the employee is due.

9. In the case of Master Polishers Vs. ADIT (supra), the Mumbai Tribunal held as under:-

"2. In the ground No. 1 and 2 of the appeal, the assessee is aggrieved with the disallowance upheld by the Ld. CIT (A) in respect of employee's contribution to ESI/PF, which was made by the CPC as an adjustment and further sustained in rectification order u/s 154 of the Act. The Ld. CIT(A) has upheld the disallowance in view of binding precedent of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT in Civil Appeal No. 2833 of 2016, observing as under:

"4. Having pursued the rectification order, the grounds of appeal and the written submissions the issue of admissibility of payment of employees' contribution of SIC/PF beyond the due date as per the relevant Statute, raised through ground number 1 is not tenable in view of decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. VS CIT in Civil Appeal No2833 of 2016 with CA No2830/2016, CA No. 159/2019, CA No.2832/2016 and CA No: 2831/2016 vide judgment dated 12.10.2022, wherein it was held that deduction u/s 36(1)(va) of the IT Act is admissible only of the amount so received from employees for PF/ESIC is credited in specified account within the due date as per the relevant Statute. In the instant appeal, it is an admitted position of the appellant that there was delay in crediting the contribution so collected in the specified account within the due date as per the relevant Statute."

10. The Hon'ble Calcutta Tribunal in the case of Konai Paper and Industries Ltd. Vs. ACIT reported in (2002) 75 TTJ Cal 448 held as under:-

"6. Clause 38 of the Employees Provident Fund Scheme, 1952, fixes the time limit for making payment in respect of contribution to the provident fund to be 15 days from the close of the month concerned. However, the issue here is whether the "month" should be considered to be the month to which the wages relates or the month in which the actual disbursement of the wages is made, we are of the considered opinion that

the expression "month" should mean here the month during which the wages/salary is actually disbursed irrespective of month to which the same relates. Thus the scheme of the government in this regard is that once a deduction is made in respect of the employees contribution to the provident fund from the salary/wages of the employee or the employer also makes his contribution, factually at the time of disbursement of the salary the payment in respect of such contribution should be made forthwith. If for some reason or other the payment of salary for a particular month be held up for considerable period of time it cannot be said that the employer would be liable to make payments in respect of the "employer's" as well as "employees" contribution in respect of wages for such period within a period of 15 days from the close of the month to which the wages relates. On the other hand, in our view, most appropriate interpretation would be that the employer would be at liberty to make payment of the contribution concerned within 15 days (subject however to the further grace period) from the end of the month during which the disbursement of the salary is actually made and the contribution of the, provident fund are, thus, generated, inasmuch as, the provision relating to the disallowance of such contribution on account of delay is rather an artificial provision. In our view, a liberal approach has got to be made to this issue. Ultimately, therefore we reverse the order of the lower authorities and direct the assessing officer to examine whether the payments of contribution in the present case were made within 15 days (allowed with further grace period of 5 days) from the close of the respective months during which the disbursement of the salary/wages were actually made. The assessing officer should recompute the amount disallowable, if any, on the above basis and take appropriate action accordingly"

5.1 In our opinion, it will be appropriate if the term every month' specified in Provident Fund scheme, whether it is the month for which salary/wages are due or month of the payment is referred to Relevant Authorities for finding out with reference to any judicial precedent in respect of provisions of the relevant Act. Accordingly, we restored this issue back to the file of the Ld. Assessing Officer with the direction to find out from the relevant PF authorities about the term every month' as mentioned in clause 38 of the employees provident fund scheme. Similarly, he may find out from the ESI Authorities. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of appeal of the assessee are accordingly allowed for statistical purposes."

11. The assessee placing the reliance on the above decisions, sought for direction to the A.O. to verify the 'due date' specified in the respective Acts and decide the issue afresh. Considering the above facts and circumstances and also the decision of the Mumbai Tribunal in the

case of Master Polishers (supra), we restore the issue to the file of the A.O. to decide the same afresh keeping in view the directions of the Mumbai Bench of the Tribunal in the case of Master Polishers Vs. ACIT (supra) along with the Tax Audit Report filed by the Assessee and the return of income filed u/s 44AB of the Act. Needless to say, the Assessee shall be provided with reasonable opportunity of being heard.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 11th day of October, 2023.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 11th day of October, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**