

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “E”: NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1109/DEL/2023  
A.Y. 2019-20**

M/s Magna Automations Limited, B-9, Ground Floor, D/S Quarters, West Patel Nagar, New Delhi-110048  <b>PAN- AAACM0255E</b>	<u>Vs</u>	DCIT, Circle-16(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Sh. Yudhister Mehani, CA	
<b>Department represented by</b>	Sh. Alok Bhura, Sr. DR	
<b>Date of hearing</b>	10.10.2023	
<b>Date of pronouncement</b>	13.10.2023	

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against the order dated 16.02.2023, for the assessment year 2019-20, passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in appeal no. NFAC/2018-

19/10145562, arising out of order dated 19.04.2020, u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the ADIT, CPC, Bengaluru.

2. Heard and perused the record. The issue primarily involved in the appeal is with regard to the disallowance of Rs. 4,09,643/- u/s 143(1) of the Act on the basis of delayed deposits of the employees contribution towards ESI and EPF.

3. On behalf of the assessee additional ground has been filed on following basis:

*“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have deleted the aggregate addition/disallowance of Rs.4,09,643/- made by Ld. ADIT, CPC u/s 36(l)(va) as the "month" to be taken should be month in ; which salary/wages are disbursed to be taken for computing the period of delay j as held in the following judicial decisions:*

- *Vigilant Security Placement & Detective Services Pvt. Ltd. vs. DCIT, ITA No. 2740/2022, dated 13.06.2023 (Del.)*
- *Fluid Air (India) Ltd. vs. DCIT, (1997) 63 ITD 0182 (Bom.)*
- *Kanoi Paper & Industries Ltd. vs. Asstt. CIT, (2002) 75 TTJ 0448 (Cal.)*

*2. That in any case and in any view of the matter, impugned addition/disallowance made by Ld. ADIT, CPC amounting to Rs.4,09,643/- u/s 36(l)(va) is not tenable/sustainable in law inter alia on various legal and factual grounds.*

*Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, it is prayed that the*

*same may please be admitted in view of the following judgments:*

- *CIT vs. Sinhgad Technical Education Society, (2017} 397 ITR 0344 (SC) NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC)*
- *VMT Spinning Co. Ltd. vs. CIT & Anr., (2016) 389 ITR 0326 (P&H)*
- *CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.)*  
*Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa)*
- *Inventors Industrial Corporation Ltd. vs. CIT, (1992) 194 ITR 0548 (Bom.)”*

4. Learned AR has relied on the order of Coordinate Bench in ITA Nos. 116 & 117/Del/2023 order dated 21.08.2023, in which one of us (AM) was in the quorum. Therein also this issue has been dealt with and restored to the file of learned AO for verification. Learned DR did not dispute the legal proposition relied by the Coordinate Bench. It will be appropriate here to reproduce the same as below:

6. *Coming to employees contributions towards PF fit ESI we noticed that similar issue came up for adjudication in the case of Bercos Melody House Vs. DCIT in ITA Nos. 277 & 278/Del/2023 and the Tribunal by order dated 25.09.2023 held as under: -*

*“4. Heard rival submissions. Identical issue came up before the coordinate bench in the case of Rekha Vs. ITO, ITA No.584/Del/2020 dated 09.08.2023 and also in the case of Sentinel Consultants Pvt. Ltd. Vs. ACIT, ITA No. 7 & 8/Del/2023 dated 12.06.2023. The coordinate bench in the case of Sentinel Consultants Pvt. Ltd. Vs. ACIT (supra) restored the issue to the file of the AO with the following observations: -*

*“9. We have carefully considered the rival submissions and*

*perused the material available on record. The disallowance of employees' contribution to PF/ESIC for breach of condition under Section 36(1 )(va) is in controversy.*

*9.1 We notice at the outset that an opportunity was given via electronic platform of the deptt. for the proposed adjustments and in the absence of e-response, the adjustments were carried out the CPC- Bangluru and intimation was issued enhancing the assessed income in the captioned assessment years. The CIT(A) in the first appeal has sustained the adjustments towards belated deposits of employees' contribution to PF/ESIC in the light of the judgment rendered by the Hon'ble Supreme Court in Checkmate Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC). The contention of the Assessee that such additions cannot be made under the umbrella of S. 143(1) is covered against the assessee the decision of the co-ordinate bench in the case of Weather Comfort Engineers Private Limited vs. ACIT-CPC ITA No. 959/Del/2021 order dated 15/02/2023. The action of CPC and CIT(A) thus cannot be faulted where some opportunity was admittedly given for e- response.*

*9.2 We now turn to alternate plea on behalf of the assessee for grant of deduction under general provisions for deduction of expenditure under S. 37 of the Act. We do not see any merit in such plea that the belated deposit of employees contributions to PF/ESIC governed under Section 36(1 )(va) is also simultaneously amenable to deduction under Section 37(1) of the Act. In terms of the provision, Section 37(1) permits deduction of expenditure which is not in the nature of expenditure prescribed in Sections 30 to 36 of the Act and also not being in the nature of capital expenditure or personal expenses of the assessee. Thus, in view of such mandate of law, the deduction of expenditure under the general clause of Section 37(1) would not extend to expenditure specially covered within the ambit of Section 36(1 )(va) of the Act. The Hon'ble Supreme Court in the case of Checkmate Pvt. Ltd. (supra) itself explains this position in Para 32 of the Judgment. Such view also draws support from the observations made in recent*

*judgment of the Hon'ble Supreme Court in the case of Pr.CIT vs. Khyati Realtors (P) Ltd. (2022) 141 taxmann.com 461 (SC). The alternate plea is thus without any merit*

9.3 *We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanoi Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT(A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity.”*

5. *Following the decision of the coordinate bench, we restore this issue to the file of the AO to decide the issue in the light of the observations made by the coordinate bench in the case of Sentinel Consultants Pvt. Ltd. and also the decision of the Kolkata Bench in the case of Kanoi Paper & Industries Ltd. Vs. ACIT (supra). Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee, the assessee is at liberty to provide all the necessary information in support of its contention.*

7. *Following the said order, we restore this issue to the file of the AO to decide the issue in the light of the observations made by the Tribunal in the case of Kanoi Paper & Industries Ltd. Vs. ACIT (supra). Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee, the assessee is at liberty to provide all the necessary information in support of its contention. Ground no.1 of grounds of appeal is allowed for statistical purpose.”*

5. Thus following the aforesaid, the issue is restored to the file of learned AO to apply the principles laid down hereinabove by the Coordinate Bench decision and pass an order afresh. **Appeal is allowed for statistical purposes.**

Order pronounced in open court on 13.10.2023.

**Sd/-  
(M. BALAGANESH )  
ACCOUNTANT MEMBER**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**