

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH, 'DB': AGRA  
(Through Virtual hearing)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.80/AGR/2021  
[Assessment Year: 2018-19]**

|  |    |                                  |
|--|----|----------------------------------|
| Ashok Auto Sales Limited,<br>12/146, Nunhai, Agra,<br>Uttar Pradesh-282005 | Vs | DCIT,<br>Circle-2(1)(1),<br>Agra |
| <b>PAN-AABCA3711C</b>  |    |                                  |
| Assessee   |    | Revenue                          |

|             |                                   |
|-------------|-----------------------------------|
| Assessee by | None                              |
| Revenue by  | Sh. Shailendra Srivastava, Sr. DR |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>11.10.2023</b> |
| <b>Date of Pronouncement</b> | <b>18.10.2023</b> |

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 30.07.2021 for the Assessment Year 2018-19.

2. The grounds of appeal reads as under:-

*"1. Learned CIT(A) has erred in affirming order of CPC Bangalore in making addition of Rs.3,89,687/- towards late deposit of ESI, already deposited prior due date filing ROI.*

*2. Learned CIT(A) has erred in affirming order of CPC Bangalore making addition of Rs.18,34,408/- towards late deposit of PF, already deposited prior to due filing ROI."*

3. In this case, the CPC Bangalore has made disallowance of PF & ESI amounting to Rs.18,34,408/- and Rs.3,89,687/- for late deposit beyond prescribed dated. Against the above order, the assessee appealed before the Ld. CIT(A). The Ld. CIT(A) considered and dealt with the issue and concluded as under:-

“5.3. In this case, adjustment u/s 143(1) has been made on the basis of information contained in the tax audit report. The audit report indicates details of contribution received from employees for various funds as referred to in section 36(1)(v)(a). It gives the details of the due date of payment and actual date of payment to the concerned authorities. It is crystal clear from the chart that employee's contribution to Provident fund and ESI have been paid beyond the due date specified, which has attracted the provisions of sec 36(1)(v)(a) r.w.s. 2(24)(x) leading to disallowance of the sum to the extent not credited to the employee's account on or before the due date stipulated in the respective PF Act and ESI Act. Therefore, in view of the remarks in the audit report, adjustments can be made in terms of section 143(1)(a), This is also in the nature of incorrect claim which is apparent from the information contained in the tax audit report. In view of the above discussion, I find that the adjustment has correctly been made under section 143(1)(a) of the Income Tax Act, Hence, no relief can be given to the appellant in respect of the above adjustment made under section 143(1) of the Income Tax Act.”

4. Against the above order, the assessee is in appeal before us.
5. We have heard ld. DR and perused the record. None appeared on behalf of the assessee. Upon careful consideration, we find that this issue has been categorically decided by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (2022) 143 taxmann.com 178 wherein it has been held that if employee contribution of provident fund and ESI paid beyond due date as specified under the relevant Act then the same has to be added back to the income of the assessee. Respectfully following the precedent, we do not find any infirmity in the order of the Ld. CIT(A). Accordingly, we uphold the same.
7. In the result, the appeal of the assessee stands dismissed.

Order pronounced in the open court on 18<sup>th</sup> October, 2023.

**Sd/-**  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

**Delhi;** Dated: 18.10.2023.

*Shekhar*

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi