

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं  
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.904 & 905/Chny/2023  
निर्धारण वर्ष /Assessment Years: 2018-19 & 2020-21

M/s.Tropical Agro System-  
India Pvt. Ltd.,  
72, Marshalls Road, Egmore,  
Chennai-600 008.

**v.**

The Asst. Commissioner-  
of Income Tax,  
Corporate Circle-3(1),  
Chennai.

[PAN: AACT 4250 E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Shri I. Dinesh, Adv.

प्रत्यर्थी की ओर से /Respondent by

:

Shri AR.V.Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

:

17.10.2023

घोषणा की तारीख /Date of

Pronouncement

:

17.10.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, AM:**

These two appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi, dated 28.07.2023 & 27.07.2023, and pertains to assessment years 2018-19 & 2020-21 respectively. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

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**2.** The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2018-19, are re-produced as under:

*1. The Order of the CIT(A) is wrong, untenable in law, opposed to facts and is able to set aside.*

*2. The CIT(A) failed to consider the fact that the proceedings u/s.143(1)(a) permits only prima-facie adjustments and a debatable issue falls outside the ambit of adjustment contemplated u/s. 143(1).*

*3. The CIT(A) erred in upholding the disallowance of Rs.23,18,470/- viz., payment of Employees Contribution to Provident fund and State Insurance fund.*

*4. The CIT(A) ought to have seen that the date on which the return was processed u/s. 143(1) the decision of the Hon'ble Jurisdictional High Court prevailed, holding that belated remittances prior to date of filing of ROI wouldn't attract disallowance u/s. 36(1)(va) of the IT Act.*

*5. The CIT(A) grossly erred in holding that the newly inserted Explanation 2 to Sec.36(1)(va) vide Finance Bill, 2021 is applicable to this AY while the legislature itself had clarified that it will come into force only w.e.f. A.Y.2021-22.*

*6. The CIT(A) having relied on the decision of the Hon'ble Supreme Court in the case of Checkmate Services, failed to appreciate the fact that the said decision was rendered in the context of a scrutiny assessment and not an adjustment u/s. 143(1)(a) of the IT Act.*

**3.** The brief facts of the case are that, the assessee has filed its return of income for AYs 2018-19 & 2020-21 on 28.09.2018 and 27.11.2020 respectively. The return of income filed by the assessee has been processed u/s.143(1) of the Income Tax Act, 1961 (in short "the Act") and intimation has been issued on 30.12.2019 and 24.12.2021 for AYs 2018-19 & 2020-21, where, the AO has disallowed employee's contribution to PF & ESI u/s.36(1)(va) r.w.s.43B of the Act. The assessee carried the matter in appeal before the First Appellate Authority and the Ld.CIT(A) for the reasons stated in their appellate orders dated 28.07.2023 & 27.07.2023, dismissed appeals filed by the assessee for both assessment years, where,

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the Ld.CIT(A) by following the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. v. CIT in Civil Appeal No.2833 of 2016 dated 12.10.2022, sustained additions made towards employee's contribution to PF & ESI u/s.36(1)(va) r.w.s.2(24)(x) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeals before us.

**4.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. At the time of hearing, Ld.Counsel for the assessee, Shri I. Dinesh, Advocate, reiterated his arguments in light of grounds of appeal filed by the assessee. However, fairly agreed that the issue is covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. v. CIT(supra). The Id.Sr.DR, Shri AR.V.Sreenivasan, Addl.CIT, fairly admitted the issue is decided in favour of Revenue by the decision of the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. v. CIT(supra). We find that the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. v. CIT(supra) has put to rest the controversy in respect of deduction towards belated payment of employee's contribution to PF & ESI under respective Acts, but within the due date prescribed for filing return of income u/s.139(1) of the Act. The Hon'ble Supreme Court after considering relevant facts and also on analysis of provisions of Sec.36(1)(va) r.w.s.2(24)(x) r.w.s.43B of the Act, held that belated payment of employee's contribution to PF & ESI under respective Acts cannot be allowed as deduction, even though, such contribution has been remitted on

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or before due date for filing return of income u/s.139(1) of the Act. The Ld.CIT(A) after considering relevant facts has rightly sustained additions made by the AO towards disallowance of employee's contribution to PF & ESI covered u/s.36(1)(va) r.w.s.2(24)(x) of the Act, and thus, we reject the grounds of appeal filed by the assessee and upheld the additions made by the AO for both the assessment years.

**6.** In the result, appeals filed by the assessee for both assessment years are dismissed.

Order pronounced on the 17<sup>th</sup> day of October, 2023, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 17<sup>th</sup> October, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

5. गार्ड फाईल/GF