

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI**

**BEFORE,  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1081/Del/2023  
(ASSESSMENT YEAR-2019-20)**

M/s Innovatiview India Private Limited Plot No.6, Tower-C 8 <sup>th</sup> Floor, Sector-127 Noida-201 303 Uttar Pradesh PAN-AAECI 6465AJ	Vs.	ACIT Circle-10(1) Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Anil Kumar, CA
Respondent by	Mr. Waseem Arshad CIT-DR

Date of Hearing	18/10/2023
Date of Pronouncement	31/10/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 16/02/2023 for Assessment Year 2019-20. Grounds taken in this appeal are as under:

*"1. That the learned AO (CPC) has erred in making the disallowance of Rs.6,44,998/ received from employees as contribution to any provident fund or any fund set up under ESI & PF Act to the extent not credit to the employees account on or before the due date and has wrongly applied provision of sec 143(1) and section 2(24)(x) read*

*with section 36(1)(va) of the Act, in the instant case in arbitrary and mechanical manner, without application of mind. That the impugned intimation issued u/s 143(1) of the IT Act is arbitrary unjust and illegal on various factual and legal grounds. Consequently, the same deserves to be quashed annulled.*

*2. That the learned CIT (A) has grossly erred both on facts and in law in computing the net income of the appellant in an assessment order dated 16/02/2023 U/s 250 of the Income Tax Act, 1961 of Rs 1.81.99,123/- against the returned income of Rs 1,75,54,125/-.*

*3. The Learned CIT (A) had failed to distinguish the submission of Assessee and is merely relying on the order of Assessing officer Department or AO should have act wisely to support the assessee Each and every assessee should not be looked at as a tax evader.*

*Appellant prays that the order of the Learned CIT (A) is against the principles of natural justice and equity and thus deserves to be quashed*

*4. The Learned CIT (A) erred in law and on facts of the case in sustaining the order of Assessing officer The business nature of the assessee should also be kept in mind and appellate authority should look at the case not from the perspective of department rather they should act as a judge to give required justice to the parties.*

*5. That the total income assessed and the Income-tax demand created thereon a arbitrary, unjust and illegal. At any rate, without prejudice, the same is very excessive is therefore, prayed that the impugned addition of Rs. 6,44,998/- be deleted and appeal be allowed.*

*6 That the appellant reserves its right to add amend/modify the grounds of appeal.”*

2. Brief facts of case are that, the assessee filed return of income declaring gross income of Rs. 1,75,54,125/- the assessee received intimation u/s 143(1) of the Income Tax Act ('Act' for short) assessing the gross total income of the assessee at Rs. 1,81,99,123/- by making addition of Rs. 6,44,998/- as per Section 36(1)(va) of the Act on the ground that sum received from Employees as

contribution to Provident fund or any fund set up under ESI Act to the extent not credited to the Employees Account on or before the due date. Aggrieved by the intimation dated 16/10/2020, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 16/02/2023 dismissed the Appeal filed by the assessee. As against the order of the CIT(A) dated 16.02.2023, Assessee preferred the present Appeal on the grounds mentioned above.

3. The Ld. Counsel for the assessee submitted that made elaborate submission on the grounds of appeal and contended that the order impugned of the CIT(A) is deserves to be set aside and further contended that the Assessee had made application for ESI & PF on 30/10/2018 itself, but the Code Number has been granted by the ESI Organization to the assessee only on 15/04/2019, thus the assessee could not deposit the contribution on time. To substantiate the said contention, the assessee produced the acknowledgement of having filed the application for EPF & ESI Registration dated 30/10/2018 at Page No. 54 to 57 of the Paper Book and the Allotment and Provident Fund Code Number Intimation letter dated 15/04/2019 at Page No. 41 of the Paper Book. Thus, submitted that the assessee could able to deposit the contribution only after issuance of Code Number by the Employees Provident Fund Organization, accordingly submitted that the lower authorities have not examined the said aspects.

4. Per contra, the Ld. Departmental Representative submitted that the *lis* involved in the present appeal is no more *res-integra*, which has been decided against the assessee by the Hon'ble Supreme Court of India in the case of Checkmate Services Pvt. Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, vide order dated 12/10/2022, therefore, sought for dismissal of the Appeal filed by the assessee.

5. We have heard both the parties and perused the material available on record. The issue of allow-ability of belated payment of ESI & PF has been decided by the Hon'ble Supreme Court of India in the case of Checkmate (supra) wherein it is 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. Admittedly, the assessee has made certain payments to the concerned authorities after the due dates mentioned in the respective Acts. The details of the payments (chart) are hereunder:-

"Details of challan paid before the due date filling of the income tax return

<b>SN</b>	<b>Nature of Fund</b>	<b>Sum received from employe</b>	<b>Due Date of Payment</b>	<b>The Actual amount Paid</b>	<b>The actual date of payment to concerned authorities</b>
1	Provident Fund	76,164	15/11/2018	76,164	27/04/2019
2	Provident Fund	81,246	15/12/2018	81,246	14/05/2019
3	Provident Fund	93,589	15/01/2019	93,589	21/05/2019
4	Provident Fund	1,05,90	15/02/2019	1,05,907	21/05/2019
5	Provident Fund	1,22,60	15/03/2019	1,22,604	22/05/2019
6	Provident Fund	1,28,80	15/04/2019	1,28,800	07/06/2019
7	Any Fund set up under the provisions of ESI Act, 1948	7,192	21/11/2018	7,192	16/11/2019
8	Any Fund set up under the provisions of ESI Act, 1948	7,770	21/12/2018	7,770	15/03/2019

9	Any Fund set up under the provisions of ESI Act, 1948	7,474	21/01/2019	7,474	15/03/2019
10	Any Fund set up under the provisions of ESI Act, 1948	7,982	21/02/2019	7,982	15/03/2019
11	Any Fund set up under the provisions of ESI Act, 1948	6,270	21/04/2019	6,270	15/06/2019

6. It is not in dispute that the assessee had made the application for EPF & ESI Registration on 30/10/2018, the Assessee had been assigned with Code Number only on 15/04/2019 by the Employees Provident Fund Organization. The assessee was able to pay the contribution only after assigning the Code Number by the Employees Provident Fund Organization and as per the Assessee, there is no provision to pay the contribution either online or manually without the issuing the registration letter and the allocation of the Code number by the ESI Organization. The assessee had been allocated with Code Number only on 15/04/2019 and there was a delay of 5 and half months delay in issuing the Registration and the Code number to the Assessee by the ESI Organization. Considering the above facts and circumstances, in the absence of any materials available on record to show that the delay caused for issuance of the Code Number is due to the reasons attributable to the Assessee, the payment to the extent of Rs.76,164/- made on 27/04/2019 and Rs.81,246/- made on 14/05/2019 (Sl. No. 1 and 2 in the above chart) stands allowed. Thus the Assessee gets partial relief.

7. In so far as, other payments shown in Serial Number 3 to 11 of the chart mentioned above, in view of the ratio laid down in the case of Checkmate

Services Pvt. Ltd. (supra) by the Hon'ble Supreme Court, we find no merit in the contention of the Assessee's Representative and we decline to interfere with the order of the CIT(A) for such disallowance in respect of the payments mentioned at Serial Num 3 to 11 in the above chart.

8. In the result, the Appeal filed by the assessee is partly allowed.

Order pronounced in open Court on 31<sup>st</sup> October, 2023.

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Dated: 31/10/2023

*Pk/R.N, Sr.ps*

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI