

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**  
**(DELHI BENCH 'E' : NEW DELHI)**  
**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SH. YOGESH KUMAR, JUDICIAL MEMBER**

ITA No. 333/Del/2023, A.Y. 2018-19

Modinagar Rolls Pvt. Ltd. Major Asha Ram Tyagi Road, Sikri Kalan, Modinagar - 201204 U.P. <b>PAN : AABCM0137C</b>	Vs.	National Faceless Appeal Centre (NFAC) Income Tax Department, Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
Assessee by	Sh. Raj Kumar, Adv.	
Revenue by	Ms. Smita Singh, SR DR	

Date of hearing:	31.10.2023
Date of Pronouncement:	06.11.2023

**ORDER**

**PER YOGESH KUMAR, JM:**

The appeal has been preferred by the Assessee against the order dated 23.12.2022 of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Order No. ITBA/NFAC/S/250/2022-23/1048192726(1) arising out of an appeal before it against the order/ intimation dated 16.10.2019 passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DC/ACIT-CPC, Bangalore (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that an intimation dated 16.10.2019 issued by CPC/AO u/s 143 of the Act has been issued by making total addition of Rs. 48,75,055. The assessee filed appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 23.12.2022 sustained the addition made by AO u/s 36(1)(va) of the Act towards late deposit of Employees Contribution Fund PF of Rs. 9,93,247/- and the addition of Rs.1,23,868 towards late deposit of ESI.

3. Aggrieved by the order of Ld. CIT(A), the assessee preferred the present appeal raising following grounds mentioned as under ;

1. *“On the facts and in the circumstances of the case, the L'd Commissioner of Income Tax , Appeals has erred in sustaining the adjustment made by the Assessing Officer at CPC U/s 36(1)(va) of the Income Tax Act, 1961, the late deposit of Employee's contribution towards PF at Rs 9,93,247/- . The Observations made, inferences drawn and findings recorded in this regard are arbitrary, misconceived, erroneous, illegal and must be quashed with directions for relief.*

2. *On the facts and in the circumstances of the case, the L'd Commissioner of Income Tax , Appeals has erred in sustaining the adjustment made by the Assessing Officer at CPC U/S 36(1)(va) of the Income Tax Act, 1961 the late deposit of Employee's contribution towards ESI at Rs 1,23,868/-. The Observations made, inferences drawn and findings recorded in this regard are arbitrary, misconceived, erroneous, illegal and must be quashed with directions for relief.*

3. *On the facts and in the circumstances of the case, the L'd Commissioner of Income Tax , Appeals has erred in not appreciating the fact that the impugned matter is emanating from intimation u/s 143(1) and not pursuant to an order u/s 143(3) of the Income Tax Act, 1961*

4. *The L'd Commissioner of Income Tax ( Appeals ) has erred while sustaining the disallowance of PF and ESI without appreciating the fact that it is a debatable issue and adjustment of*

*the same in the return of income was not permissible and is hence illegal, arbitrary and bad in law.”*

4. The issue involved in the present appeal is regarding allowability of ESI and PF which was deposited after the due date prescribed in the respective Act, which is no more *res-integra*. Hon’ble Supreme Court in the case of Checkmate Services Private Limited vs. Commissioner of Income Tax in Civil Appeal No. 2839/ 2016, order dated 12/10/2022 held that the employees contribution to PF and ESI, if not remitted before the due date prescribed in the respective enactments, cannot be allowed as deduction. In view of the above ratio of the Hon’ble Supreme Court in the case of Checkmate Services (supra), we are declined to interfere with the order of the Ld. CIT(A). Accordingly, the grounds of appeal of the assessee are dismissed as devoid of merits.

5. In the result, appeal filed by the assessee is dismissed.

**Order pronounced in the open court on 6<sup>th</sup> November, 2023.**

**Sd/-**

**(DR. B.R.R.KUMAR)**

**ACCOUNTANT MEMBER**

**Sd/-**

**(YOGESH KUMAR)**

**JUDICIAL MEMBER**

*Date:- 06 .11.2023*

**\*Binita, SR.P.S\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**