

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 243/Asr/2023
Assessment Year: 2017-18**

Indu Mahajan 22a, Gali No-2Vijay Nagar, Batala Road [PAN:-AASPM8327Q] (Appellant)	Vs.	ITO, Ward-Amritsar (Respondent)

Appellant by	Sh., Bhargav Puri, Adv
Respondent by	Sh. Ravinder Mittal, Sr DR.

Date of Hearing	01.11.2023
Date of Pronouncement	08.11.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-NFAC, Delhi, [in brevity the 'CIT (A)'], order passed u/s 250 of the Income Tax Act 1961, [in brevity 'the Act'] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. CPC, Bangaluru [in brevity 'the AO'] order passed u/s 154 r.w.s. 143(1) of the Act.

2. The assessee has taken the following grounds:

“Grounds of Appeal

1. The CIT(A) has disallowed employer share of Provident Fund amounting to Rs. 162184 paid after the due date under the EPF Act but before the due date of filing of return. The learned CIT(A) has wrongly disallowed Employer share of EPF u/s 36(1)(va) as the said section is applicable to employee contribution. The employer contribution is covered u/s 43B and as per the said section, the Employer contribution has to be paid before the due date of filing of return of income under the Income Tax Act. Since, the assessee has paid the employer contribution before due date of filing of return, the addition made is against the provisions of the law.

2. The CIT(A) has disallowed employer share of ESI amounting to Rs. 72095 paid after the due date under the ESI Act but before the due date of filing of return. The learned CIT(A) has wrongly disallowed Employer share of ESI u/s 36(1)(va) as the said section is applicable to employee contribution. The employer contribution is covered u/s 43B and as per the said section, the Employer contribution has to be paid before the due date of filing of return of income under the Income Tax Act. Since, the assessee has paid the employer contribution before due date of filing of return, the addition made is against the provisions of the law.”

3. The AR mentioned that the appeal is filed with a delay of 88 days. The petition for condonation of delay is filed and the delay is duly explained. The Id. AR mentioned that by wrong advice of consultant, the appeal before ITAT was filed online. But no physical copy was filed. After realising the mistake, the appeal

is filed physically before the bench. The ld. DR had not made any strong objection against the assessee. Accordingly, the delay for 88 days is condoned.

4. The brief fact of case is that the assessee has filed return u/s 139(1) for the impugned assessment year. By passing the audit report of the assessee the return was processed by CPC u/s 143(1) and the disallowance was made for late deposit of contribution made in respect of PF & ESI u/s 36 (1) (va) of the Act. The assessee filed the rectification petition U/s 154 of the Act for wrong adjustment of delayed payment of PF & ESI which was paid before filing of return U/s 139(1). By invoking section 36(1)(va) the rectification petition was rejected by the ld. Assessing Officer. Both the employer's & employees' contributions of PF & ESI amount to Rs. 308963/- was confirmed. Aggrieved assessee filed an appeal before the ld. CIT(A) against the order of the ld. AO, passed U/s 154 of the Act. The assessee placed that the entire amount of late contribution of PF & ESI is not the point of addition for violation of section 36(1)(va) of the Act. The entire amount is mixed in two parts. The assessee segregated the additions in two parts which are amount to Rs. 162,184 /- is related to employer's contribution and the rest amount to Rs.146,769/- is related to the employees' contribution. The rest amount to Rs.146,769/- is well accepted by the ld. AR of the assessee for addition with the total income by respectfully relying on the order of the Hon'ble Supreme Court in

the case of **Checkmate Services P. Ltd. Vs CIT (Civil Appeal No.2833 of 2016 dated 12.10.2022)**, [2022] 143 taxmann.com 178 (SC).But the assessee is contesting for the employer's contribution amount to Rs. 162,184/- before us.

The ld. AR placed that all the details were submitted before the ld. CIT(A). But without considering the assessee's submission the order was passed and confirmed the assessment order. Being dissatisfied with the order of the CIT(A) the assessee filed an appeal before us.

5. The ld. AR filed a written submission which is kept in record. The ld. AR argued and placed that the nature of the payment of the PF & ESI is combined with employer and employee contribution. The ld. AR placed that the employer contribution is related to section 43B which is covered by the **CBDT Circular No. 22/2015 dated 17.12.2015**. The employer contribution should be allowed if the payment is done before the filing of return u/s 139(1). The extract of the Circular No. is below:

“Circular No. 22/2015

F.No.279/Misc./140/2015-ITJ

Government of India Ministry of Finance Department of Revenue

Central Board of Direct Taxes

New Delhi, 17th December, 2015

Subject:- Allowability of employer's contribution to funds for the welfare of employees in terms of section 43B(b) of the Income Tax Act.

As per section 43B of the Act certain deductions are admissible only on payment basis. It is observed by the Board that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B of the Act, if it has been paid after the 'due dates', as per the relevant Acts.

2. *The matter has been examined in light of the judicial decisions on this issue. In the case of Commissioner vs. Alom Extrusions Ltd, [2009] 185 TAXMAN 416 (SC), the Apex Court held that the amendments made in section 43B of the Act i.e. deletion of second proviso and amendment in the first proviso, being curative in nature are retrospectively applicable from 1.04.1988. It further held that by deleting the second proviso to section 43B of the Act and amending the first proviso, the contribution to welfare funds have been brought at par with the other duty, cess, fee, etc. Thus, the proviso is equally applicable to the welfare funds also. Therefore the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income."*

6. The Id. AR fully relied on this Circular and placed that the employer contribution amount to Rs.162,184/- would not be attracted under the purview of taxable income and the entire amount was paid before the filing the return u/s

139(1). Prayed that the addition amount to Rs. 162,184/- should be quashed. The ld. AR has drawn our attention in **APB page-60** for list of month-wise contributions, **APB pages 60-71**, the statement showing details of EPF& ESI payments made after due date under the relevant Acts along with payment of challans.

7. The ld. DR fully relied on the order of the revenue authorities and not able to produce any contrary orders or Circular against the submission of the assessee. The ld. DR argued that the respective challan should be point of verification.

8. We heard the rival submission and considered the documents available in the records. On perusal of record, it reveals the **CBDT Circular No. 22/2015 dated 17.12.2015** is applicable on the ld. AO and other revenue authorities during processing of return U/s 143(1). The assessee has correctly relied on the section 154 and the mistake of the ld. AO is apparent from record. In appeal the ld. CIT(A) has wrongly invoking the section 36(1)(va) on employer's contribution. Whereasthe same contribution is covered by the section 43B of the Act. Hence, we set aside the appeal order in this issue.

Related to addition amount to Rs. 162,184/-, we fully relied on the Circulars of the CBDT. We respectfully consider the order of the Hon'ble Apex Court. The employer contribution is not under the purview of the order of the Hon'ble Apex

Court in the case of Checkmate Service Pvt. Ltd (supra). The Hon'ble Apex Court has only dealt with the delayed payment of employee's contribution. The payment of employer's contribution in EPF & ESI amount to Rs. 162,184/- is subject to verification by the Id. AO.

Accordingly, we remit back the matter to the file of the Id. AO for limited verification of payment of employer's contribution amount to Rs. 162,184/- on basis of the term indicated above. Both the Id. AR & Id. DR have respectfully accepted the direction of the bench.

9. In the result, the appeal of the assessee bearing no. **ITA No. 243/ASR/2023** is allowed for statistical purposes.

Order pronounced in the open court on 08.11.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order