

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA Nos.3012, 3013 & 3014/Del/2022
Assessment Years: 2018-19, 2019-20 & 2020-21

R & K Company Manpower P. Ltd., C/o- The Tax Chambers, Advocates & Legal Advisors, C-177, Defence Colony, LGF, New Delhi	Vs.	DCIT, Circle-20(2), New Delhi
PAN :AACCR8884Q		
(Appellant)		(Respondent)

Assessee by	Ms. Swati Talwar, Advocate
Department by	Sh. S.L. Anuragi, Sr. DR

Date of hearing	15.11.2023
Date of pronouncement	29.11.2023

ORDER

PER SAKTIJIT DEY, V.P.

Captioned appeals by the assessee arise out of three separate orders dated 31.10.2022 passed by National Faceless Appeals Centre (NFAC), pertaining to assessment years 2018-19, 2019-20 and 2020-21.

2. The only common issue arising in all these appeals relates to disallowance of deduction claimed towards employees'

contribution to Provident Fund (PF) and Employees' State Insurance (ESI) paid beyond the due date prescribed under PF Act and ESI Act.

3. We have considered the submissions of both the parties and perused the materials on record. Undisputed facts are, in the returns of income filed for the impugned assessment years, the assessee has claimed deduction towards payment made of employees' contribution to PF and ESI. While processing the returns of income filed by the assessee, the Centralized Processing Centre (CPC), having found that the employees' contribution to PF and ESI were not paid/remitted within the due dates prescribed under the PE and ESI Act, disallowed such deduction in terms with Explanation 1 to section 36(1)(va) read with section 2(24)(x) of the Act.

4. Though, the assessee contested the aforesaid disallowances by filing appeals before the first appellate authority, however, it failed in its attempt, as, the first appellate authority relying upon a decision of the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. Vs. CIT in Civil Appeal No.2833 of 2016 [TS-791-SC-2022] upheld the disallowance.

5. Before us, it is the specific contention of the assessee that due date, as per section 36(1)(va) of the Act, should be the date on which salary was actually disbursed to the employees and not the date on which salary was due. In this context, learned counsel has relied upon following judicial precedents:

- i. Rakesh Janghu, ITA No. 2675/Del/2022, dated 09.10.2023
- ii. Prime Comfort Products Pvt. Ltd. Vs. ACIT, ITA No.530/Del/2023, dated 26.04.2023

6. No doubt, the issue whether the delayed payment of employees' contribution to PF and ESI is allowable as deduction is no more *res integra* in view of the ratio laid down by the Hon'ble Supreme Court in case of Checkmate Services P. Ltd. (supra). However, it is the specific plea of the assessee before us that the due date as provided under section 36(1)(va) of the Act should be construed from the date on which salary was actually disbursed to the employees and not the date on which salary was due. In our view, the aforesaid contention of the assessee merits consideration.

7. We have further observed, while considering similar pleadings made by the assessee, the Coordinate Benches have restored the issue to the Assessing Officer for consideration in the

light of judicial precedents. Following the judicial precedents cited before us, we restore this issue to the file of the Assessing Officer for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee and further, the Assessing Officer must pass a well reasoned order after considering the submissions of the assessee and the ratio laid down in the decisions to be cited before him. Grounds are allowed for statistical purposes.

8. In the result, appeals are allowed for statistical purposes.

Order pronounced in the open court on 29th November, 2023

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 29th November, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi