

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.541/Del/2023, A.Y. 2019-20

M/s. Harbir Singh C/o CA M R Sahu House No. : 651, 1 st Floor, Sector-10A Nr. G.D.Goenka Public School Gurgaon, Haryana-122001 PAN : AFRPA3023P	Vs.	ITO, Ward 1(4), Gurgaon
(Appellant)		(Respondent)

Appellant by	Sh. M.R.Sahu, CA
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	21/12/2023
Date of Pronouncement	22/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 27/12/2022 for Assessment Year 2019-20 arising from the intimation order dated 25/09/2020 passed by the Assessing Officer towards late payment of employees contribution to

ESIC/PF under Section 36(1)(va) read with Section 43B of the Act.

2. Brief facts of the case are that, an intimation dated 10/02/2019 passed u/s 143(1) of the Income Tax Act 1961 ('Act' for short) by the DCIT, CPC, Bangalore, for A.Y 2019-20 by disallowing the amount of Rs. 43,97,361/- on account of late deposit of Employees Contribution to EPF & ESIC. Aggrieved by the said intimation, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) also denied the relief vide order dated 27/12/2022 in the light of judgment of Hon'ble Supreme Court in the case of *Check Mate Pvt. Ltd. vs. CIT reported in (2022) 143 taxmann.com 178 (SC)*.

3. Aggrieved by the first appellate order, the assessee is in appeal before the Tribunal.

4. The ld. counsel for the assessee at the outset submitted that the deposit of employee's contribution should be reckoned from the month in which the salary has been actually disbursed rather than the month for which the salary relates. Further submitted

that in Assessee's own case for the A.Y 2018-19 in ITA No. 540/Del/2023, vide order dated 10/08/2023, the Co-ordinate Bench of the Tribunal remanded the matter to the file of A.O. to determine the due date towards deposit of Employee's Contribution to PF & ESIC having regard to the date of actual disbursement of salary. Thus, submitted that the matter may be remitted to the file of the Assessing Officer.

5. We have heard the parties perused the material. In Assessee's own case for the A.Y 2018-19 in ITA No. 540/Del/2023, vide order dated 10/08/2023, the Co-ordinate Bench of the Tribunal remanded the matter to the file of A.O. to determine the due date towards deposit of Employee's Contribution to PF & ESIC having regard to the date of actual disbursement of salary *in following manners:-*

“5. The issue towards taxability of belated employees' contribution to Provident Fund/ESIC is no longer res initegra in the light of the judgment of the Hon'ble Supreme Court in the case of Checkmate Services (P.) Ltd. vs. CIT (supra). The Co-ordinate Bench of the Tribunal in Cemtile Industries vs. ITO (supra) had expressed a view that such adjustment/disallowance is also permissible in the proceedings carried out under Section 143(1) of the Act. Very recently, the Co-ordinate Bench of the Tribunal in Savleen Kaur & Others vs.

ITO in ITA Nos. 2249/Del/2022 & Others for Assessment Year 2018-19 & Others vide order dated 09.01.2023 has also taken a similar view and upheld the action of the Revenue. In parity with the view taken by Co-ordinate Benches, we do not see any merit in the appeal of the assessee on first principles.

6. The Co-ordinate Bench of Tribunal in the case of Sentinel Consultants Pvt. Ltd. vs. ACIT ITA No.7 & 8/Del/2023 order dated 12.06.2023 observed in para no.9.3 of that order that month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date. The relevant operative para of the order of the Co-ordinate Bench of Tribunal is reproduced herein under for ready reference:

"9.3 We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanoi Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT(A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity."

7. The observations made in Sentinel Consultants Pvt. Ltd. Shall apply mutatis mutandis. Consequently, we consider it expedient to restore the issue back to the file of AO for factual verification and redetermination in the issue on the light of determination made by the Co-ordinate Bench in the case of Kanoi Paper and Industries Ltd. (supra). The AO shall thus re-compute the amount of disallowance under Section 36(i)(va) of the Act, if any, on the above basis, in accordance with law. The assessee shall be entitled to appropriate relief under Section 36(i)(va) of the Act where it is found that deposits have been made towards PF/ESIC within the due date from the close of month of actual disbursement of salary/wages in the light of interpretation rendered in the case of Kanoi Paper and Industries Ltd.(supra).

8. Hence, in terms of such observations, the intimation for A.Y. 2020-21 is set aside and the issue in appeal is restored back to the file of AO for its fresh determination in accordance with law.”

6. By respectfully following the above decision of the Co-ordinate Bench of the Tribunal Assessee's own case, in parity with the aforesaid decision, the matter is remitted to the file of the Assessing Officer for fresh adjudication of the issue in accordance with law having regard to the observations made in Assessee's own case for A.Y 2018-19 (supra). Needless to say, proper opportunity shall be given to the assessee to adduce evidence towards timely deposit of employee's contribution to the PF/ESIC.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 22nd December, 2023

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 22/12/2023
B.R./R.N Sr. Ps.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI