

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

**BEFORE SH. G.S. PANNU, VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.580/Del/2023
(Assessment Year: 2019-20)

Rajesh Kumar A-1/208, Rohtak Road, New Delhi. PAN No. AIGPK8026L	Vs.	ACIT Circle 44(1), New Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Rajeev Kumar Jain, CA
Revenue by	Shri Vivek Vardhan, Sr. DR

Date of hearing:	19.01.2024
Date of Pronouncement:	29.01.2024

ORDER

PER ANUBHAV SHARMA, JM :

This appeal by Assessee against the order u/s 250 of the Income Tax Act, 1961 (hereinafter referred as "Act") dated 10.01.2023 in regard to AY 2019-20 arising out of an intimation order dated 07.07.2020 passed u/s 143(1) of the Act by Assistant Director of Income Tax, CPC Bangalore (hereinafter referred as "AO").

2. The facts in brief are that assessee is proprietor of M/s General Packaging and had filed return of income which was processed u/s 139(1) of the Act by making an adjustment of Rs.7,89,082/- u/s 36(1)(va) r.w.s. 2(24)(x) of the Act on account of disallowance of

delayed deposit of contributions of ESI and PF. The Ld.CIT has dealt the matter with following relevant observations in para 5.5, 5.6, 5.7, & 5.8 and relying the judgment of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT in appeal no. 2833/2016 dated 12.10.2022 sustained the addition. The assessee is in appeal raising following grounds:

1. *“That on the facts and in the circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, is bad both in the eye of law and on facts.*
2. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the addition of Rs.7,89,080/- made by the AO(CPC) u/s 36(1)(va) of the Act on account of alleged late deposit of employees' contribution towards Provident Fund and ESI fund.*
3. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the disallowance of Rs.4,52,948/- pertaining to employer's contribution towards Provident Fund and ESI to which the provisions of section 36(1)(va) of the Act are not applicable.*
4. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the disallowance of Rs.4,52,948/- pertaining to employer's contribution towards Provident Fund and ESI to which the provisions of section 36(1)(va) of the Act are not applicable, on the ground that the appellant has not provided*

any authentic documentary evidences in this respect, whereas complete details in this respect were furnished vide written submissions dated 31.10.2022.

5. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the disallowance of Rs.3,36,134/- ignoring the contention of the appellant that employees' contribution towards Provident Fund and ESI Fund would qualify for deduction even if paid after due date prescribed under Provident Fund Act and ESI Act but before due date of filing of return specified under section 43B(b) of the Income Tax Act read with its first proviso.*

6. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the addition of Rs.3,36,134/- ignoring the various jurisdictional and other judicial pronouncements on the issue.*

7. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the addition of Rs.3,36,134/- by relying on the decision of Hon'ble Supreme Court dated 12.10.2022 in Civil Appeal No.28.33 in the case of Checkmate Services (P) Ltd. vs. CIT-1 143 taxmann.com 178 (SC), which is not applicable in the instant case.*

8. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the addition of Rs.3,36,134/- by ignoring the provisions of Explanation 2 inserted by the Finance Act, 2021 in section 36(1)(va) of*

the Act w.e.f. 1.4.2021.

9. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred both on facts and in law in confirming the addition of Rs.3,36,134/- by ignoring the provisions of Explanation 5 inserted by the Finance Act, 2021 in section 43B of the Act w.e.f. 1.4.2021.*
10. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred in law in dismissing Ground No.8 pertaining to charging of Interest Rs.3,007/- u/s 234A of the Act. The interest deserves to be deleted.*
11. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred in law in dismissing Ground No.9 pertaining to charging of Interest Rs.43,341/- u/s 234B of the Act. The interest deserves to be deleted.*
12. *That on the facts and in the circumstances of the case, the Ld.CIT(A), National Faceless Appeal Centre has erred in law in dismissing Ground No.10 pertaining to charging of Interest Rs.13,677/- u/s 234C of the Act. The interest deserves to be deleted.*
13. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. Heard and perused the record.

4. At the time of hearing it came up that the disallowance of Rs.7,89,082/- has been made u/s 143(1) of the Act on the basis of tax audit report, wherein there was some inadvertent error on the part of the assessee as the employees' contribution which is covered u/s 43B(b) of the Act to the extent of Rs.4,52,948/- was aggregated with employees' contribution covered u/s 36(1)(va) of Rs.3,36,134/-. Ld.CIT(A) has sustained the addition in the absence of any documentary evidences to give this bifurcation of employers and employee contribution. It appears from the written submissions, copy available at page nos.1 to 16 of the paper book that before Ld.CIT(A) a detailed bifurcation of the contributions was given along with copy of challans. The issue required intervention of Ld.CIT(A) to recall for a report from Ld.AO or to make a factual verification of the claim of the assessee. However, the same has not been done. Thus, with regard to aforesaid ground nos. 3 & 4 relating to employers contribution, we consider it an appropriate case to refer the issue to Ld.AO before whom the assessee can file the relevant information and evidences and claim the relief in accordance with law. However, with regard to ground no.5 and 6 pertaining to employers' contribution, we find no force in the contention of Ld.AR that the issue is not covered by the

judgment of Hon'ble Supreme Court in the case of Checkmate Service Pvt. Ltd. The question of applicability of amendments by the Finance Act, 2021 has been considered by the coordinate benches at Delhi to which reference can be made of the judgment in the case of Checkmate Services Pvt. Ltd. Thus, with regard to ground nos. 5 to 9, we find no reason to interfere in the findings of the Ld.CIT(A).

5. Ground no. 1 & 2 being general and ground no. 10 to 12 being consequential are accordingly stand decided in favour of the assessee qua the issue of delayed deposit pertaining to employers' contribution.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.01.2024

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 29.01.2024

**Kavita Arora, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI