

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री गिरीश अग्रवाल, लेखा सदस्य  
के समक्ष

Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A. No.: 136/KOL/2022  
Assessment Year: 2018-19

*Ranjit Paul.....Appellant*  
*[PAN: AFXPP 8545 D]*

*Vs.*

*ADIT, CPC, Bengaluru.....Respondent*

**Appearances:**

**Assessee represented by:** *Sh. C. Roy, A/R.*

**Department represented by:** *Sh. Ajay Robin Singh, JCIT, Sr. D/R.*

Date of concluding the hearing : February 5<sup>th</sup>, 2024

Date of pronouncing the order : February 7<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') dated 24.11.2021 for AY 2018-19.

2. The sole issue involved in this appeal is relating to the disallowance made by the lower authorities of Rs. 7,21,831/- made u/s 36(1)(va) of the Act on late deposit of employees' contribution towards to ESI&PF.

3. Earlier the appeal of the assessee was allowed by the Tribunal vide order dated 14.07.2022. However, the said order was recalled vide order dated

02.05.2023 in an MA No. 48/KOL/2022 moved by the Department in the light of the decision of the Hon'ble Supreme Court in the case of *Checkmate Services P. Limited vs. CIT* reported in *2022 LiveLaw (SC) 838* wherein the Hon'ble Supreme Court has held that the disallowance is attracted u/s 36(1)(va) read with Section 2(24)(x) of the Act in respect of late deposit of employees' contribution to ESI&PF i.e. after the due date prescribed for such deposit in the respective statutes relating to such funds, irrespective of the fact that the said contribution has been deposited before the last date of filing of return of income.

4. The matter is accordingly heard afresh. The only contention now raised by the Id. Counsel for the assessee has been that the tax auditor while mentioning the amount of contribution made towards ESI/PF has also included the employer's contribution to such funds. He in this respect has submitted that out of the amount of Rs. 7,21,831/- an amount of Rs. 1,26,488/- was made towards employer's contribution to ESI and further an amount of Rs. 2,87,232/- was relating to employer's contribution to PF. He has submitted that the disallowance in respect of employer's contribution, if deposited before the due date of filing of the return, is not attracted u/s 36(1)(va) of the Act. The AO is accordingly directed to look into and verify the aforesaid contention of the assessee and if such contention is found to be correct, not to make disallowance relating to the employer's contribution to ESI&PF.

5. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

**Kolkata, the 7<sup>th</sup> February, 2024.**

Sd/-

**[Girish Agrawal]**

Accountant Member

Sd/-

**[Sanjay Garg]**

Judicial Member

Dated: 07.02.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Ranjit Paul, 93, Dakshindari Road, Ultodanga, Kolkata-700 048.**
2. **ADIT, CPC, Bengaluru.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata