

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

**SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA Nos.2958 & 2959/De1/2022
Assessment Years: 2017-18 & 2018-19

Protiviti India Member Private Ltd., 15 th Floor, Tower A Building No. 5, DLF Phase-III, Gurgaon	Vs.	ACIT, Circle-3(1), Gurgaon
PAN :AADCC6092N		
(Appellant)		(Respondent)

Assessee by	Sh. Gaurav Singh, Advocate
Department by	Sh. Vivek Vardhan, Sr. DR

Date of hearing	12.02.2024
Date of pronouncement	14.02.2024

ORDER

PER AMIT SHUKLA, JM

Captioned appeals have been filed by the assessee against the order passed by NFAC of even dated 20.10.2022 for the assessment years 2017-18 and 2018-19 in relation to the adjustment made under section 143(1) of the Income-tax Act, 1961 (in short 'the Act')

2. The grounds raised relate to disallowance made under section 36(1)(va) of the Act vide intimation dated 2nd March, 2020 under section 143(1) of the Act on delayed deposit of employees contribution to Provident Fund (PF) and Employees' State Insurance (ESI) within the prescribed due date. In the assessment year 2017-18, the disallowance made is Rs. 24,87,238/- and for assessment year 2018-19 disallowance made is Rs.12,52,707/-. Learned CIT(A) has confirmed the disallowance after relying upon the decision of Hon'ble Supreme Court in case of Checkmate Services Pvt. ltd. Vs. CIT-1 in Civil Appeal No. 2833 of 2016.

3. Before us, learned counsel for the assessee submitted that most of the employees' contributions to PF and ESI account have been paid within the due date, however, in some cases the delay is only marginal of 3 to 7 days. The delay is not attributable to the assessee because the EPFO website was not working properly due to which EPF challan could not be generated. In support, he has also filed copy of email written to SRO, Noida, EPFO, stating that EPFO site was not working on these dates. He has also filed copy of screenshots of the site showing that it was out of order. This has also been explained before the CIT(A) also. Once the delay is

not attributable to the assessee because of the EPFO website was not working and was out of order, then the assessee cannot be said to have violated any deadline of the provisions of the respective Act. Thus, it cannot be said that there is a delay in depositing of PF and ESI within the prescribed due date. Here it is not a case of whether the decision of Hon'ble Supreme Court in case of Checkmate (supra) has to be applied because the Hon'ble Supreme Court has held that if there is a delay in the payment beyond the prescribed due date provided in the respective Act, the same shall be treated as the income of the assessee. Once the delay in depositing the PF and ESI is not on account of failure of the assessee, but the failure of the system of website itself as it was out of order and challans cannot be uploaded, then it cannot be held that the assessee should be fastened with such a liability. Accordingly, the disallowance confirmed by the CIT(A) is deleted.

4. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 14th February, 2024

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 14th February, 2024.

RK/-

Copy forwarded to:

1. Appellant

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

Asst. Registrar, ITAT, New Delhi