

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA  
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.602/Kol/2023  
Assessment Year: 2018-19**

Real Time Engineering Pvt. Ltd., P-165/1 (A-2/2), Diamond Park Kalua, South 24 Parganas- 700104, West Bengal, India. (PAN: AACCR1055M)	Vs.	Income Tax Officer, Ward- 2(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : N o n e

Respondent by : Shri Anindya Kumar Bandopadhyay, Addl. CIT

Date of Hearing : 19.02.2024

Date of Pronouncement : 21.02.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1052257724(1) dated 21.04.2023 passed against the intimation by Ld. DCIT, CPC, Bangalore u/s.143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 17.10.2019 for AY 2018-19.

2. At the outset, we find that none appeared on behalf of the assessee at the time of hearing. After hearing the Ld. DR and on perusal of the material available on record, we dispose of the appeal of the assessee on merit.

3. Heard the ld. DR. At the outset, we note that there are mainly two issues involved in the present appeal, one relating to disallowance

made u/s. 36(1)(va) of the Act in respect of delay in deposit of employer as well as employee contribution of Provident fund and Employees' State insurance (PF & ESI) and the second issue relating to short credit of Rs.500/- towards TDS claimed by the assessee.

4. We note that ground no. 4 of appeal relate to disallowance made u/s. 36(1)(va) of the Act in respect of delay in deposit of employer as well as employees' Contribution of Provident Fund and Employees State Insurance (PF & ESI) totaling to Rs.8,05,576/-. From this ground, it is noted that the amount of disallowance consists of both employer as well as employee contribution towards PF & ESI, Hon'ble Supreme Court in *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* had dealt with the issue relating to contribution of employees' PF & ESI whereby the delay in deposit of amount collected towards employees' contribution was disallowed. Deposit of employer's contribution to Pf & ESI within the due date of filing of return as per section 43B of the Act is an allowable claim in the hands of the assessee.

5. We have also perused the written note furnished by the assessee contained in paper book of 67 pages. From the perusal, it is not discernible as to what is the amount of contribution which relates to employee's share and what relates to employer's share. In the fitness of things, we find it proper to remit the matter back to the file of Ld. AO for the purpose of verification of the two amounts out of the total of Rs.8,05,576/- pertaining to employer and employee share. Based on the verification, ld. AO may consider allowing the claim of the assessee which for the purpose of employer's share ought to be in accordance with the provisions contained in section 43B of the Act. In respect of employees' contribution the decision given by the Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd (supra)* be adhered to. Needless to say that assessee be given reasonable opportunity of being

heard to submit its explanation and documentary evidence in this respect. Accordingly, ground no. 4 taken by the assessee is allowed for statistical purposes.

6. Ground no. 6 relates to credit of TDS granted to the assessee is lesser by Rs.500/-. Briefly stated, facts are that the Ld. AO has allowed TDS amounting to Rs.2,35,720/- in place of TDS claimed in the return amounting to Rs.2,36,220/-. After hearing the Ld. DR and on perusal of the documents available on record, we remit the matter to the file of Ld. AO for verification of the difference of Rs.500/- in TDS credit. If the same is found correct, then, necessary credit may be allowed in accordance with the law. Hence, this ground of appeal is allowed for statistical purpose.

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

Order is pronounced in the open court on 21st February, 2024

Sd/-  
(Rajpal Yadav)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated:21st February, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order  
Assistant Registrar  
ITAT, Kolkata Benches, Kolkata