

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.532/DEL/2023
(Assessment Year: 2019-20)**

**ITA No.533/DEL/2023
(Assessment Year: 2020-21)**

Satendra Shrivastav,
Office No.7, 1st Floor, Mahindra Complex,
Gautam Budh Nagar,
Noida – 201 301 (Uttar Pradesh),

vs.

ITO, Ward 5(3)(3),
Gautam Budh Nagar.

(PAN : COKPS5551J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 10.04.2024

Date of Order : 16.04.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals by the assessee are directed against the orders of the Id. CIT (Appeals)/National Faceless Appeal Centre both dated 19.11.2022 for the assessment years 2019-20 & 2020-21.

2. Since the issues are common and connected, these are being disposed of by this common order.

3. Grounds of appeal taken by the assessee in both the appeals are common except the difference in amount of addition, hence grounds of appeal in AY 2019-20 are reproduced for the sake of brevity as under :-

“1. On the facts and in the circumstances of the case and in law the authorities below have not followed the proper procedure prescribed by the law before imposing tax on assessee. The action of authorities below is wrong, illegal, bad at law, misconceived and unjustified therefore it should be quashed.

2. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition of Rs.29,04,705/- u/s 36(1)(va) r.w.s. 2(24)(x) of the Act, being on account of delayed deposit of employees' contribution to PF/ESI as per the audit report without considering all the available facts in this case. Therefore, the action of authorities below is wrong, illegal, bad at law misconceived and unjustified, therefore it should be quashed.

3. On the facts and in the circumstances of the case and in law the authorities below have erred in imposing the total interest and fees of Rs.1,29,050/- which is sum Rs.15,474/- u/s 234A, Rs.82,528/- u/s 234B, Rs.26,048/- u/s 234C and fee of Rs.5,000/- u/s 234F of the Income Tax Act. The action of authorities below is wrong, illegal, bad at law, misconceived and unjustified therefore it should be quashed.

4. On the facts and in the circumstances of the case and in law the authorities below have erred in adjusting the total available TDS credit of Rs.5,83,203/- against the total tax demand of Rs.12,28,101/- and raised a demand of Rs.6,44,900/- vide order passed u/s 143(1)/250 of the act whereas as per the filed income tax return there was a refund of Rs.3,85,420/-. The action of authorities below is wrong, illegal, bad at law, misconceived and unjustified therefore it should be quashed.”

4. The main issue involved is against the addition made by the AO u/s 36(1)(va) r.w.s. 2(24)(x) of the Income-tax Act, 1961 on account of delayed deposit of employees' contribution to PF/ESI, which was sustained by the Id.

CIT (A) referring to the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd..

5. Against this order, assessee is in appeal before me. None appeared on behalf of the assessee. I have heard ld. DR for the Revenue and perused the records.

6. I find that the issue on merits is covered against the assessee by the decision of Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. (2022) 143 taxmann.com 178 wherein it has been held that if employee contribution of provident fund and ESI paid beyond due date as specified under the relevant Act then the same has to be added back to the income of the assessee. Respectfully following the precedent, we do not find any infirmity in the order of the ld. CIT (A). Accordingly, we uphold the same.

7. Apropos issue of TDS refund, the AO is directed to look into the same and decide as per law.

8. Our above order applied *mutatis mutandis* to both the assessment years.

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

Order pronounced in the open court on this 16th day of April, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 16th day of April, 2024/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**