

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

**Before Dr. B. R. R. Kumar, Accountant Member
Ms. Astha Chandra, Judicial Member**

ITA No. 3098/Del/2023 : Asstt. Year : 2018-19

Shashank Tiwari, B-5/158, Safdarjung Enclave, New Delhi-110029	Vs	Income Tax Officer, Ward-29(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAJPT0798H		

**Assessee by : Sh. Saurav Rohtagi, CA
Revenue by : Sh. Piyush Tripathi, Sr. DR**

Date of Hearing: 12.02.2024	Date of Pronouncement: 19.04.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 31.08.2023.

2. The issue pertains to rectification u/s 154 of the Income Tax Act, 1961 and subsequent disallowance u/s 36(1)(va) r.w.s. 43B of the Income Tax Act, 1961 of ESI/PF amounts paid by the assessee.

3. The Id. AR submitted that for computing the period of delay "month" to be taken should be the month in which salary/wages are disbursed by the assessee and not calendar month. Reliance was placed on the decisions of Kolkata Bench of the Tribunal in the case of Kanoi Paper Industries Ltd. Vs. ACIT (75 TTJ 448) and the Delhi Benches in the cases of

Vigilant Security Placement & Detective Services Pvt. Ltd. Vs. DCIT in ITA No. 2740/Del/2022 dated 13.06.2023, Dignus Services Vs. ITO in ITA Nos. 116 & 117/Del/2023 dated 26.09.2023, Sentinel Consultants Pvt. Ltd. Vs. ACIT in ITA Nos. 7 & 8/Del/2023 dated 12.06.2023, B. L. Kashyap & Sons Ltd. in ITA No. 2622/Del/2022 dated 18.07.2023 and VVDN Technologies Pvt. Ltd. in ITA No. 164/Del/2023 dated 04.07.2023, Fluid Air (India) Ltd. Vs. DCIT 63 ITD 182 (Bom).

4. The Id. DR relied on the order in the case of Vigilant Security Placement & Detective Services Pvt. Ltd. Vs. DCIT in ITA No. 2740/Del/2022, order dated 13.06.2023.

5. Heard the arguments of both the parties and perused the material available on record.

6. The Co-ordinate Bench of ITAT in the case of Vigilant Security Placement & Detective Services Pvt. Ltd. Vs. DCIT (supra) has held as under:

"7. We have considered rival submissions and perused the materials on record. In our view, after the decision of Hon'ble Supreme Court in case of Checkmate Services P. Ltd. vs. CIT, 448 ITR 518 (SC), the disputed issue is no more res integra, as the Hon'ble Supreme Court has clearly and categorically held that in case employees contribution to PF and ESI have not been deposited within the due date prescribed under the PF and ESI Acts, the same cannot be allowed as deduction in view of the provisions contained under section 36(1)(va) of the Act. Hon'ble Supreme Court has further held that in such circumstances, the employees contribution to PF and ESI not deposited within the due date, shall be treated as income of the assessee u/s. 2(24)(x) of the Act. In that view of the matter, we are unable to accept assessee's

contention that the disallowance cannot be the subject matter of adjustment u/s. 143(1) of the Act.

8. As regards the alternative contention of the assessee that the employees contribution to PF and ESI have been deposited within the due date keeping in view the fact that the months to be considered should be the month, in which, salary/wages are disbursed, we direct the Assessing Officer to examine the claim of the assessee strictly with reference to the provisions contained under the PF and ESI Acts in respect of the mode and manner of depositing the employees contribution towards PF & ESI and decide the issue accordingly. Needless to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issue."

7. Since, the facts are similar on merit, the Assessing Officer is directed to examine the claim of the assessee strictly in accordance with the PF and ESI Acts in respect of the mode and manner of depositing the employees contribution towards PF & ESI and with the ratio laid down by the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. vs. CIT (supra) and to re-compute the disallowance.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 19/04/2024.

Sd/-

(Astha Chandra)
Judicial Member

Dated: 19/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR