

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.136/Del/2023  
Assessment Year: 2018-19

|                                                                                                                              |            |                                               |
|------------------------------------------------------------------------------------------------------------------------------|------------|-----------------------------------------------|
| Sh. Narender Singh,<br>Unit No. 25, 4 <sup>th</sup> Floor,<br>Emerald Plaza, Emerald Hills<br>Sector 65, Gurgaon,<br>Haryana | <b>Vs.</b> | Income Tax Officer,<br>Ward-3(1),<br>Gurugram |
| <b>PAN :CTNPS7493D</b>                                                                                                       |            |                                               |
| <b>(Appellant)</b>                                                                                                           |            | <b>(Respondent)</b>                           |

|               |                                       |
|---------------|---------------------------------------|
| Assessee by   | None                                  |
| Department by | Sh. Subhra Jyoti Chakraborty, CIT(DR) |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 25.04.2024 |
| Date of pronouncement | 25.04.2025 |

**ORDER**

**PER SAKTIJIT DEY, VICE-PRESIDENT**

This appeal by the assessee is against order dated 07.12.2022 passed by National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2018-19.

2. At the time of call, none appeared on behalf of the assessee. However, an application by the assessee seeking adjournment is on record.

3. Considering the fact that the assessee has already sought multiple adjournments and also the fact that the issue arising in appeal is squarely covered by the decision of the Hon'ble Supreme Court, we decline assessee's request for adjournment and proceed to decide the appeal on merits with the assistance of learned Departmental Representative.

4. The issue arising for consideration is, disallowance of assessee's claim of deduction of Rs.41,67,682/- representing delayed payment of employees' contribution to Employees' State Insurance (ESI) and Provident Fund (PF).

5. Briefly the facts are, while processing the return of income filed by the assessee for the impugned assessment year, the Centralized Processing Centre (CPC) noticed that employees' contributions to PF and ESI were not paid within the due date as provided under Explanation -1 to section 36(1)(va) of the Income-tax Act, 1961 (in short 'the Act'). Accordingly, the deduction claimed was disallowed. Assessee contested the aforesaid disallowance before the first appellate authority. However, following the decision of the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1

[2022] 143 taxmann.com 178 (SC), learned first appellate authority sustained the disallowance.

6. We have heard learned Departmental Representative and perused the materials on record. Undisputedly, the assessee has paid employees' contribution to ESI and PF beyond the due date prescribed in the relevant Acts governing such payments. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. (supra), on first principle, the deduction in respect of such payment cannot be allowed. However, the Coordinate Bench in case of Sh. Narender Singh Narwal Vs. Asstt. Director of Income Tax, in ITA No. 3829/Del/2023 for AY: 2020-21, has held that the due date in terms of Explanation 1 to section 36(1)(va) has to be reckoned from the actual date of disbursement of salary irrespective of the month to which such salary relates. The observations of the Coordinate Bench are as under:

*“3. We have heard the parties and perused the materials on record. Briefly the facts are, while processing the return of income filed for the assessment year under dispute, the Centralized Processing Centre (CPC), having noticed that employees contribution to PF and ESI was not paid within the due date prescribed under the relevant Acts, disallowed the deduction claimed on account of such payment invoking the provisions of section 36(1)(va) of Income-tax Act, 1961 (in short 'the Act') read with its Explanations. The assessee contested the aforesaid disallowance by filing an appeal before learned first appellate authority. However, applying the ratio*

*laid down by the Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1 [2022] 143 taxmann.com 178 (SC), learned first appellate authority sustained the disallowance.*

4. *Learned counsel appearing for the assessee, though, conceded that the issue is squarely covered by the decision of Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. (supra), however, he submitted, the due date for deposit of employees' contribution to PF and ESI has to be reckoned from the date of disbursement of salary to the employees' regardless of the month to which the salary belongs. In this context, he relied upon a decision of the Hon'ble Calcutta High Court in case of Kanoi Papers & Industries Ltd. Vs. Assistant Commissioner of Income Tax [2002] 75 TTJ 448 (Calcutta). He also relied upon a decision of the Coordinate Bench in case of Sai Computers Ltd. Vs. Assistant Director of Income Tax, in ITA No.2862/Del/2022 and Ors., order dated 18.10.2023. Thus, he submitted, the issue may be restored back to the Assessing Officer to factually verify whether the employees' contribution of PF and ESI were actually paid to the Government within the due date having regard to the date of disbursement of salary.*

5. *Learned Departmental Representative relied upon the observations of the Assessing Officer and learned first appellate authority.*

6. *Having considered rival submissions, we find, limited submission of the assessee is to the effect that the due date as per Explanation 1 to section 36(1)(va) of the Act should be construed with reference to the actual date of disbursement of salary and not the month for which salary is paid. In case of Sai Computers Ltd. Vs. ADIT (supra), the Coordinate Bench has observed as under:*

*“3. When the matter was called for hearing, the ld. Counsel for the assessee at the outset pointed out that the judgment rendered by the Hon'ble Supreme Court in Checkmate Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC) is on the first principles that timely payment under the respective Acts applies to the employees' contribution and the statute has treated employees and employers contribution differently after the insertion of Section 36(1)(va) in the statute. Thus, the crux of the judgment in Checkmate (supra) is that employees' contribution stands on a different footing than employer's contribution. However, the assessee is entitled to show that the*

*employee's contribution to PF/ESIC has been timely deposited qua the due date of payment of salary under the respective statute. The Id. counsel pointed out that the Co-ordinate Bench of Tribunal in Kanoi Papers & Industries Ltd. vs. CIT 75 TTJ 448 (Cal) has examined the concept of due date implied in Section 36(1)(va) of the Income Tax Act as well as the respective Acts and observed that the due date should be reckoned from the end of the month during which the disbursement of salary was actually made for the purposes of determination of due date under the respective Acts for deposit of contribution to the PF/ESIC etc. The Id. counsel thus submitted that mere approval of liability towards payment of salary without actual disbursement would not fastened obligation for deposits of employees' contribution under the Labour Act per se as observed by the Co-ordinate Bench in Kanoi Papers (supra). The Id. counsel fairly submitted that this aspect has not been examined by the Revenue Authorities and therefore, this aspect needs to be examined for the purposes of determination of default in timely depositing contribution qua the due date as understood in Kanoi Papers case.*

*4. We find merit in such alternative plea towards timely deposit of employees' contribution to PF/ESIC qua the due date prescribed under relevant legislations and regulations. Thus while the action of the Revenue for making adjustments towards belated payment to employees' contribution is endorsed on first principles, the matter is restored back to the file of the designated Assessing Officer for the purposes of ascertaining whether there is any delay in deposit of such contributions qua the due date in the light of the Kanoi Papers (supra). It shall be open to the assessee to place all factual matrix before the Assessing Officer and take all pleas for evaluation and determination of the issue by the Assessing Officer. The Assessing Officer shall examine this alternative aspect and pass a fresh order in accordance with law after giving proper opportunity to the assessee of being heard."*

*7. Keeping in view the aforesaid decision of the Coordinate Bench, we restore the issue to the Assessing Officer for deciding*

*assessee's claim of deduction afresh after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.*

8. *In the result, appeal is allowed for statistical purposes."*

7. In view of the aforesaid, we restore the issue to the Assessing Officer to factually verify the actual date of disbursement of salary and thereafter, decide the issue after providing due and reasonable opportunity of being heard to the assessee.

8. In the result, appeal is allowed for statistical purposes.

***Order pronounced in the open court on 25<sup>th</sup> April, 2024***

***Sd/-***  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 25<sup>th</sup> April, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi