

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 3733/Del/2023
(Assessment Year: 2020-21)**

Anoop Singh, 2097, Parvatia Colony, Faridabad, Haryana (Appellant) PAN: BMAPS2771R	Vs. ITO, Ward-1(1), Faridabad (Respondent)
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Assessee by :	None
Revenue by:	Shri Manish Tiwari, Sr. DR
Date of Hearing	06/06/2024
Date of pronouncement	12/06/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.3733/Del/2023 for AY 2020-21, arises out of the order of the Commissioner of Income Tax (Appeals)-1, Pune [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2023-24/1057283292(1) dated 23.10.2023 against the order of assessment passed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.12.2021 by the Assessing Officer, DDIT, CPC (hereinafter referred to as 'Id. AO').
2. None appeared on behalf of the assessee despite issuance of notice to the assessee. Hence we proceed to dispose of this appeal on hearing the Id. DR and based on materials available on record.
3. Though the assessee has raised several grounds of appeal, the only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in disallowing the employees contribution to Employee State Insurance

(ESI) and Provident Fund (PF) u/s 36(1)(va) of the Act in the facts and circumstances of the instant case.

4. We have heard the Id. DR and perused the materials available on record. At the outset, it is not in dispute that the assessee had deposited the Employees Contribution to ESI and PF beyond the due dates prescribed under the respective Acts but before the due date of filing the return of income u/s 139(1) of the Act. Apparently, this issue is decided in favour of the revenue by the recent decision of the Hon'ble Supreme Court in the case of Check Mate Pvt. Ltd. vs. CIT reported in 143 taxmann.com 178 (SC). However, for this purpose, the due date under the respective PF and ESI Acts is to be reckoned from the month in which the salary has been actually disbursed rather than the month for which the salary relates. For instance, the salary for the month of April, 2019 has been paid in the month of May 2019 and therefore, due date for deposit of employees contribution to PF/ESIC should be reckoned from May 2019 and consequently the due date should be recorded as 15.06.2019. This argument raised by the assessee in his grounds of appeal deserves to be accepted in the light of the decision of the Co-ordinate Bench in the case of Sentinel Consultants P. Ltd. in ITAs No. 7 & 8/Del/2023 for Assessment Years 2018-19 and 2019-20 order dated 12.06.2023 and the matter is to be remitted to the file of the Id. AO for satisfying about deposit of employees contribution well within time and for rectification of the intimation drawn under Section 143(1) of the Act. The Id. AO is directed accordingly and hence Ground No. 4 raised by the assessee is allowed for statistical purposes.

5. With regard to the alternate ground raised by the assessee vide Ground No. 5 for grant of deduction under general provisions for deduction of expenditure u/s 37 of the Act. We do not see any merit in such a plea that the belated deposit of employees contributions to PF/ESIC governed u/s 36(1)(va) of the Act is also simultaneously amenable to deduction u/s 37(1) of the Act. In terms of the provision, Section 37(1) of the Act permits deduction of expenditure which is not in the nature of expenditure prescribed in Sections 30 to 36 of the Act and also not being in the nature of capital expenditure or

personal expenses of the assessee. Thus, in view of such mandate of law, the deduction of expenditure under the general clause of Section 37(1) of the Act would not extend to expenditure specially covered within the ambit of Section 36(1)(va) of the Act. The Hon'ble Supreme Court in the case of Checkmate Pvt. Ltd. (supra) itself explains this position in Para 32 of the Judgment. The alternate plea raised by the assessee vide Ground No. 5 is hereby dismissed as devoid of merits.

6. In view of the aforesaid decision, the other grounds raised by the assessee become academic in nature and in any case fully addressed by the decision of the Hon'ble Supreme Court in the case of Checkmate Pvt Ltd referred supra. Hence all the grounds raised by the assessee are hereby dismissed except Ground No. 4 which is restored to the file of Id. AO as directed in Para 4 hereinabove.

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

Order pronounced in the open court on 12/06/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:12/06/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi