

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

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3293/Del/2023  
(ASSESSMENT YEAR 2019-20)**

Subodh Kumar Choudhary D-85, 1 <sup>st</sup> Floor Street No.4 Laxmi Nagar, Delhi-110092  PAN:ADJPC6448A <b>(Appellant)</b>	Vs.	ADIT, CPC Delhi      <b>(Respondent)</b>
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Assessee by	Shri Saurav Rohtagi, CA
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	09/05/2024
Date of Pronouncement	14/06/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 05/04/2023 for Assessment Year 2019-20.

**2.** At the time of hearing, the Ld. AR submitted that for computing the period of delay “month” to be taken should be the month in which salary/wages are disposed by the assessee and not the calendar month. He submitted that in the present appeal, the similar issue is under consideration similar to previous Assessment Year i.e., AY 2018-19. Similar issue was adjudicated by the Bench and the relevant decision is filed in the Form of Paper Book at page 16. He submitted that the issue was remitted back to the Assessing Officer to ascertain the due date for remittance of PF/ESI contributions of employees. He submitted that facts in this case are exactly similar and similar direction may be given to ascertain the due date for remittance.

**3.** On the other hand, the Ld. DR relied on the orders of the lower authorities.

**4.** Considered the rival submissions and material placed on record. The Co-ordinate Bench has considered the similar issue in assessee’s own case in the previous Assessment Year i.e. Asst. Year 2018-19 and the relevant findings are given below:-

*“ 5. In so far as employees contributions towards PF & ESI it is noticed that the issue as to whether the due date under PF/ESI Acts should be as per the calendar month for which the salary is payable or from the month in which the salary is paid to the employee by the employer came up for adjudication in the case of Sentinel Consultants Pvt. Ltd. Vs. ACIT (supra) and the Tribunal restored the issue to the file of the AO with the following observations:-*

*"9. We have carefully considered the rival submissions and perused the material available on record. The disallowance of employees' contribution to PF/ESIC for breach of condition under Section 36(1)(va) is in controversy.*

*9.1 We notice at the outset that an opportunity was given via electronic platform of the deptt. for the proposed adjustments and in the absence of e-response, the adjustments were carried out the CPC-Bangluru and intimation was issued enhancing the assessed income in the captioned assessment years. The CIT(A) in the first appeal has sustained the adjustments towards belated deposits of employees' contribution to PF/ESIC in the light of the judgment rendered by the Hon'ble Supreme Court in Checkmate Pvt. Ltd. vs. CIT (2022) 143 taxmann.com 178 (SC). The contention of the Assessee that such additions cannot be made under the umbrella of 5. 143(1) is covered against the assessee the decision of the co-ordinate bench in the case of Weather Comfort Engineers Private Limited vs. ACIT-CPC ITA No. 959/Del/2021 order dated 15/02/2023. The action of CPC and CIT(A) thus cannot be faulted where some opportunity was admittedly given for e response.*

*9.2 We now turn to alternate plea on behalf of the assessee for grant of deduction under general provisions for deduction of expenditure under S.37 of the Act. We do not see any merit in such plea that the belated deposit of employees contributions to PF/ESIC governed under Section 36(1) (va) is also simultaneously amenable to deduction under Section 37(1) of the Act. In terms of the provision, Section 37(1) 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) 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. Such view also draws support from the observations made in recent judgment of the Hon'ble Supreme Court in the case of*

*Pr.CIT vs. Khyati Realtors (P) Ltd. (2022) 141 taxmann.com 461 (SC). The alternate plea is thus without any merit.*

*9.3 We also take note of yet another plea made out on behalf the assessee towards methodology of calculation of default under the relevant PF/ESIC Act. The Ld. Counsel contends that the month during which the disbursement of salary is actually made would be relevant for the purposes of determination of due date of deposit under the respective statute. The accrual of liability towards payment of salary without actual disbursement would not fasten obligation for deposits of employees contribution in the labour Acts per se. as observed by the co-ordinate bench in Kanol Paper and Industries Ltd. vs. ACIT (2002) 75 TTJ 448 (Cal). This aspect has not been found to be examined by the Assessing Officer or CIT (A). Hence without expressing any opinion on merits on this aspect, we deem it expedient to restore the matter to the file of designated AO. It shall be open to the assessee to place factual matrix before the AO and take such plea for evaluation of the AO. The AO shall examine this aspect and fresh order in accordance with law after giving proper opportunity."*

*6. We find similar view has been taken by the co-ordinate benches in the cases of B. L. Kashyap & Sons Ltd. (supra) and VVDN Technologies Pvt. Ltd. (supra). The Id. Counsel submits that in view of these decisions the matter may be restored to the Assessing Officer to ascertain the due date for remittance of the PF/ESI contributions of employees. Considering the decisions of the co-ordinate benches referred to above we restore this issue to the file of the Assessing Officer to decide in the light of the observations made by the Tribunal in the case of Kanoi Paper & Industries Ltd. Vs. ACIT (supra). Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee and the assessee is at liberty to provide all the necessary information in support of its contention.*

*7. In the result, appeal of the assessee is allowed for statistical purpose."*

**5.** Respectfully following the above decision, we are also of the view that the issue under consideration are remitted back to the file of the AO to ascertain the due date of remittance of the PF/ESI contributions of employees. Accordingly, appeal filed by the assessee is allowed for statistical purposes.

**6.** In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 14<sup>th</sup> June, 2024

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

Dated: 14/06/2024

*Pk/sps*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI