

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.848/Bang/2024
Assessment Year: 2018-19

Lucida Technologies Pvt. Ltd. No.3980/81, 3 <sup>rd</sup> Floor, 80Ft. Road, Hoskerehalli Main Road Girinagar Banashakari 3 <sup>rd</sup> Stage Bangalore Karnataka 560 085  <b>PAN NO : AADCL2292H</b>	<b>Vs.</b>	DCIT Circle-4(1)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Kirat Singh, A.R.
<b>Respondent by</b>	:	Sri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	06.06.2024
<b>Date of Pronouncement</b>	:	06.06.2024

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal by assessee is directed against order of NFAC dated 7.3.2024 for the assessment year 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”)

**2.** The assessee is in appeal before us with regard to making addition of Rs.8,63,721/- u/s 36(1)(va) of the Act on account of delay in remittance of PF & ESI contribution while processing the return u/s 143(1)(a) of the Act.

**3.** After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in the case of Manikandan Vazhukkapara Kumaran in ITA No.577/Bang/2023

dated 29.11.2023 for the assessment year 2018-19, wherein held as under:

*“10. We have perused the submissions advanced by both sides in the light of various decisions relied by both sides.*

*10.1 In the present facts of the case, the assessee is a proprietary concern, engaged in the business of manpower supply for the years under consideration. Admittedly in the audit report filed along with return of income, the assessee had mentioned the details in respect of the contributions failed to be deposited with the statutory funds within the due date. The CPC after issuing communication to the assessee, made disallowance of such contributions in the hand of the assessee for the years under consideration in an intimation issued u/s 143(1)(a) of the Act. It is the contention of the ld. A.R. that at the time when disallowance was made, this issue was covered by the jurisdictional High Court in the favour of assessee by the decision in case of Essae Teraoka (P) Ltd. v. DCIT reported in (2014) 43 taxmann.com 33, according to which, since the deposit to the respective funds was made before the due date of filing the respective fund was made before the due date of filing of the original return of income, any delay that happened stood condoned.*

*10.2 Subsequently, by virtue of the decision of Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. cited (supra), the ratio has been laid down that any delay in depositing the employees contribution to the respective funds by an employer would amount to disallowance u/s 36(1)(va) of the Act of such contribution. Further, it is a trite law that any ratio expressed by Hon'ble Supreme Court would relate back to the time from which the provision has been enacted and therefore, such law declared by Hon'ble Supreme Court was retrospectively applicable, and the decisions rendered by various Hon'ble High Courts favouring assessee would be of no benefit at that stage.*

*10.3 The ld. A.R. though did not dispute this position submitted that, what would be the due date for deposit of the employees' contribution to the PF would have to be computed from the date when the employer pays salary to such employees. He has referred to section 38 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in his argument in support.*

*10.4 He thus submitted that in terms of section 38 of the Act, Employees provident fund and Miscellaneous Provisions Act, 1952 refers to the time limit for depositing the contribution within 15 days of the close of the month must be to the month in which the salary payment is made. He submitted that the entire additional evidence filed before this Tribunal establishes that there is a delay in paying salary to the employees and therefore, if that is taken into consideration, there cannot be any delay that would be attributable towards the deposit of employees' contribution to the relevant fund. He also submitted only a minor amount would fall within the purview of disallowance u/s 36(1)(va) of the Act. The ld. A.R. thus prayed that the additional evidence filed by assessee may be admitted and the issue may be remanded to the ld. AO for necessary verification based on such additional evidences.*

10.5 *At the request of the ld. A.R., we had directed the ld. D.R. to carry out necessary verifications and sufficient time was granted to the ld. D.R. in order to respond to the additional evidence filed by assessee.*

10.6 *The ld. D.R. after going through the entire additional evidences submitted that, apparently the dates have been shifted and therefore, there is delay only in respect of few contributions. However, the ld. D.R. submitted that had this to be the case, why would the auditor in the audit report give different dates. He raised the concern in respect of the same by submitting that merely because there were decisions of jurisdictional High Court which was in favour of the assessee during the relevant period would not support the auditor to tinker with the actual date of payment of salary and actual deposit of employees' contribution with the relevant fund. He submitted that all these evidences now tendered by the assessee are mere after thought and therefore, cannot be entertained. He also submitted that these arguments or submissions are raised by the assessee for the first time before this Tribunal.*

10.7 *After considering the above submissions by both sides, we are compelled to analyze the provisions of Provident Fund Act relied by the ld. A.R. which is filed at the paper book pages 58 to 198 filed on 11.10.2023. Section 38 of the Employees Provident Fund Act reads as under:*

*"Section 38 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, becomes relevant. Sub-section (1) thereof reads as under:*

*The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage [of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund "electronic through internet banking of the State Bank of India or any other Nationalized Bank authorized for collection" on account of contributions and administrative charge];*

*"Provided that the Central Provident Fund Commissioner may for reasons to be recorded in writing, allow any employer or class of employer to deposit the contributions by any other mode other than internet banking".*

10.8 *The above provision requires an employer to deduct the employees' contribution before paying the employee his wages and further requires to deposit such contribution withheld by the employer along with employer's own contribution to the relevant fund held by the Government. It is further requires that the employer shall within 15 days of the close of every month pay the same to such fund along with administrative charges. It is thus, clear that after deducting the employees' contribution towards the fund the same has to be deposited with the Government within 15 days of the close of every month. In our opinion, reference to 15 days of*

*the close of every month has to be in relation to the month during which the payment of wages is to be made and the corresponding liability to deduct employees' contribution to such fund immediately arises. Further, the expression "within 15 days of the close of every month", therefore, must be interpreted as having reference to the close of the month for which the wages are required to be paid with corresponding date to deduct employees' contribution and to deposit the same with the relevant fund.*

*10.9 On perusal of section 38 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952, the phrase used in respect of the wages that an employer is supposed to pay to an employee for any period or part of period, are represented as, contributions that are "payable". This means, the legislature is very clear in its intent that the employer is supposed to deduct the contributions in respect of the funds at the end of the month when the employee is eligible to receive his or her wages and the employer is cast upon with the duty to pay the necessary dues. The section 38 therefore, envisages that, at the end of every month when the employer is due to make the payment to such employees, the necessary contributions have to be deducted and deposit within 15 days of such deductions. With such an understanding, the argument advanced by the Id. A.R. cannot be appreciated that, in a case the salary or wages are paid in a subsequent month, the liability to deposit the employees' contribution to the fund gets deferred by another month.*

*10.10 The dictum laid down by Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Cited (supra) is that section 38 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 makes it obligatory for the employer before paying and employee the wages or salary to deduct the employees' contribution. Thus, to analyze in the form of an example assuming a circumstance that the employer does not make payment of salary/wages to the employees for 2 to 3 consecutive months. This does not mean that the employer gets the benefit of depositing the employees' contribution of such months for which the salary was not paid on time to such employees will get shifted. That would render the entire provision otios and is not the intention of the legislature also.*

*10.11 We have carefully gone through the additional evidences for all the years under consideration and note that such shifting of depositing the contribution on behalf of the employees by the assessee is not in consonance with the provisions of section 38 as observed herein above and argued by the Id. D.R.*

*10.12 In additional ground No.3, the argument of Id. A.R. is that audit report originally filed by the assessee is wrong as the auditor mentioned single date of remittance though there were multiple dates of remittances in each month.*

*10.13 The Id. A.R. pleaded before us that audit report is wrongly prepared by the tax auditor for which there is no evidence brought on record regarding any confirmation from the tax auditor. In our opinion, such arguments to tarnish a professional is not appreciated. Based on the above discussion, we do not find any merit to consider the same.*

10.14 We, therefore, do not find any merit in the new argument raised by the assessee in additional ground No.2 requesting to remand the issue back to the Ld. AO to verify the claim of disallowance in the light of the additional evidences filed by assessee. We, therefore, dismiss additional ground No.2 raised the assessee, as such argument is not in consonance with the provisions of Section 38 under Employees Provident Fund and Miscellaneous Provisions Act, 1952.

Accordingly, the additional ground nos. 2-3 raised by assessee stands dismissed in all the appeals.”

**3.1** Accordingly, the ground of appeal raised by the assessee are dismissed on similar lines.

**4.** In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 6<sup>th</sup> June, 2024

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 6<sup>th</sup> June, 2024.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**