

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 270/Mum/2024
(Assessment year: 2018-19)

Sahadev Devji Betkar 404, Saidham Apartments, Samarth Nagar, Jogeshwari (East), Mumbai-400 060 PAN : AAEPB3909P	vs	Deputy Commissioner of Income- tax, CPC, Bengaluru
APPELLANT		RESPONDENT

Assessee by : Ms. Kinjal Bhuta - Advocate
Respondent by : Shri Dinesh A Chourasia – Sr.AR

Date of hearing : 30/05/2024
Date of pronouncement : 06/ 06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the Commissioner of Income-tax, Appeal Addl/ JCIT(A)-9, Delhi, [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 31.10.2023. The impugned order was emanated from the order of the CPC, Bengaluru passed under section 143(1) of the Act, date of order 17/05/2019.

2. The assessee has taken the following grounds of appeal:-

“1. The Ld. Additional/Joint Commissioner of Income Tax (Appeals), erred in confirming the actions of the Assessing Officer (Centralized Processing Center) in making an addition of Rs. 31,89,899/- under section 36(l)(va) of the Income Tax Act, 1961.

2. Without prejudice to the above, out of the total addition of Rs. 31,89,8997-, an amount of Rs. 17,32,6827- is attributable towards the employer's contribution and the same should be allowed as a deduction under section 43B of the Income Tax Act, 1961.”

3. The appeal was filed before the bench with a delay of 18 days. The assessee filed affidavit with condonation of delay. The reason is explained. The Id. DR has not made any objection to the delay in filing of appeal. Accordingly, the delay for 18 days is condoned. The appeal is taken for adjudication.

4. Brief facts of the case is that the assessee filed the return under section 139(1) of the Act which was processed under section 143(1) of the Act. The addition was made for delayed payment of the PF / ESIC amount to Rs.31,89,899/-. Aggrieved, assessee filed an appeal before the CIT(A). The Ld.CIT(A) passed an order and confirmed the addition. Being aggrieved, the assessee filed an appeal before us.

5. The Ld.AR appeared and submitted a written submission which is kept in the record. Ld.AR first invited our attention to **ABP page 1**. The relevant chart is reproduced as below: -

“Statement showing payment of PF Contribution of the Employees & Employer: -

	<i>Due date</i>	<i>Actual Date of Payment</i>	<i>Employee's contribution</i>	<i>Employer's contribution</i>	<i>Amount of challan paid</i>
<i>EPF</i>	<i>15-06-17</i>	<i>16-06-17</i>	<i>4,28,870</i>	<i>4,70,355</i>	<i>8,99,225</i>
<i>EPF</i>	<i>15-08-17</i>	<i>21-08-17</i>	<i>4,99,573</i>	<i>5,47,867</i>	<i>10,,47,440</i>
<i>EPF</i>	<i>15-10-17</i>	<i>17-10-17</i>	<i>4,45,158</i>	<i>4,88,192</i>	<i>9,33,350</i>
<i>ESIC</i>	<i>31-08-17</i>	<i>29-08-17</i>	<i>83,616</i>	<i>2,26,268</i>	<i>3,09,884</i>

“

The Ld.AR in argument placed that addition was made for delayed payment of PF & ESIC for total amount to Rs.31,89,899/-. Out of that the employees' contribution is Rs.14,57,217/- which is admitted by the Id. AR for addition. But the employer's contribution amount to Rs.17,32,682/- is subject to a claim of deduction under section 43B of the Act. But the issue was not properly considered by the Ld.CIT(A). Copy of the challans are duly attached from **APB pages 2-9** and the written submission filed before the JCIT(A)-9 on dated 26/09/2023 alongwith acknowledgement which are enclosed in **APB pages 10-21**.

6. The Ld.DR fully relied on the order of the Revenue Authorities and argued accordingly.

7. We heard the rival submission and considered the documents available in the record. The Revenue has added back the total delayed payment of PF & ESIC but the employer's contribution amount to Rs.17,32,682/- is allowable for deduction U/s 43B which is indeed point of addition. But the employees' contribution of Rs.14,57,217/- is confirmed for addition considering the order of the hon'ble **Apex Court** in the case of **Checkmate Services Pvt Ltd vs CIT 143 taxmann.com 178 (SC)**. The Id. ARhas enclosed the challansas proof of payment

of PF& ESIC related to employer's contribution and placed before the Bench. But the verification of challans is incomplete before the revenue authority related to the employer's contribution. So, we remit back the matter back to the file of the Ld.AO for verification of challan and allow the deduction of employer's contribution under section 43B of the Act. Accordingly, the order is passed in the terms indicated above.

8. In the result, the appeal of the assessee in **ITA No.270/Mum/2024** is partly allowed.

Order pronounced in the open court on 06th day of June 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 06/06/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**