

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No.258/Ahd/2021  
Assessment Year: 2019-20**

GMW Private Limited, 885, G.I.D.C. Estate, Makarpura, Vadodara – 390 010. Gujarat. <b>[PAN – AACCG 4508 Q]</b>	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(1)(1), Vadodara.
(Appellant)		(Respondent)
Assessee by	Shri Surendra Modiani, AR	
Revenue by	Shri Sudhakar Verma, Sr. DR	
Date of Hearing	04.07.2024	
Date of Pronouncement	27.08.2024	

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

This appeal is filed by the Assessee against order dated 23.09.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2019-20.

2. The assessee has raised the following ground of appeal :-

“1. *The learned Commissioner (Appeals) erred in upholding addition and disallowance of Rs.22,69,973/- on account of contributions to Provident Fund and ESI which are paid during the same year but after the due date for payment under relative labour law.*”

3. The assessee filed return of income for the Assessment Year 2019-20 declaring gross income of Rs.1,72,23,838/- on 25.10.2019. The income tax return was processed under Section 143(1) of the Income Tax Act, 1961 in which the delayed payments of ESI/Provident Fund payments of Rs.22,69,973/- was disallowed by the

CPC, Bangalore vide order dated 01.05.2020. Accordingly, the Assessing Officer issued total demand of Rs.7,80,520/-.

4. Being aggrieved by the Intimation under Section 143(c) of the Act dated 01.05.2020, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Id. AR submitted that Section 143(1) intimation was not given to the assessee prior to the adjustment made vide order dated 01.05.2020. The Ld. AR submitted that the issue relating to disallowance of amount of Rs.22,69,973/- for delayed payments of employee's contribution to PF, the disallowance *per se* not challenged by the Hon'ble Gujarat High Court and the Hon'ble Supreme Court decision in case of Checkmate Services Private Limited vs. CIT, 143 taxmann.com 178. However, in assessee's case, addition is not justified for the reason that the addition was made by way of adjustment under Section 143(c) of the Act whereas the decision of Hon'ble Supreme Court in case of Checkmate Services Private Limited (supra) was delivered after the date of intimation of addition. The Ld. AR further submitted that the jurisdiction under Section 143(1) of the Act should be tested on the date of intimation and addition by way of adjustment of intimation under Section 143(1) of the Act is debatable and controversial matter and, therefore, on the basis of retrospective amendment of Income Tax Act is beyond the scope of Section 143(1) of the Income Tax Act, 1961. The Ld. AR relied upon the following decisions :-

- 1) *Geo Miller & Co. Ltd. Vs. Deputy CIT & Ors. (2003) 262 ITR 237 (Cal).*
- 2) *Smriti Properties (P) Ltd. Vs. Settlement Commission (It And Wt) & Ors (2005) 278 ITR 274 (Cal)*
- 3) *CIT vs. K. Venkateshwar Rao (1988) 169 ITR 330 (AP)*
- 4) *CIT vs. Palani Andavar Cotton and Synthetic Spinners Limited, 326 ITR 339 (Madras High Court)*

5.1 The Ld. AR also relied upon the following decisions of other Benches of the Tribunal :-

- i) *The issue of adjustment on account of delayed payments of provident fund contributions came up before Mumbai bench of ITAT in case of M/s. P.R. Packaging Service vs. ACIT in ITA No.2376/Mum/2022 after the*

*Hon'ble Supreme Court held that such contributions are disallowable.*

*The Hon'ble Tribunal took cognisance of the decision of Hon'ble Supreme Court and thereafter held that adjustment on this account could not be made in earlier years in intimation under Section 143(1)*

- ii) *The Hon'ble Delhi Bench of ITAT in case of M/s.360 Realtors LLP vs. ADIT, Central Processing Centre in ITA No.303/Del/2022 has held deleted the addition made in the assessment on this ground.*

6. The Ld. DR relied upon the intimation under Section 143(1) of the Act and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. After going through the order dated 01.05.2020 in respect of intimation under Section 143(1) of the Act, at page no.7 of the said order there is a categorical mention at the top of the table related to incorrect claim under Section 143(1)(a)(ii) indicating that "please refer to this office communication dated 14.02.2020 sent to the e-mail ID and [rps@gmw.in](mailto:rps@gmw.in). As there has been no response/the response giver is not acceptable the adjustments as mentioned below are being made to the total income as per the provisions of Section 143(1)(a)." From this noting itself it appears that the intimation related to the adjustment was properly communicated on 14.02.2020 to the assessee on the same e-mail ID which was mentioned by the assessee before the Tribunal in Form No.36 & before the CIT(A) in Form no.35 as well. In the intimation order dated 01.05.2020 the first page of the said order at the footnote has also mentioned the same e-mail ID. Thus, the contention of the Id. AR does not sustain.

8. As regards to merits of the case, the issue related to belated payment of contribution to PF and ESI is already covered against the assessee by the decision of the Hon'ble Apex Court in the case of Checkmate Services Private Limited (supra) and in fact as on date of intimation order by CPC, the Hon'ble Gujarat High Court, which is the jurisdictional High Court, was against the assessee. Therefore, the CIT(A) has rightly dismissed the appeal of the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 27<sup>th</sup> August, 2024.

*Sd/-*  
**(MAKARAND VASANT MAHADEOKAR)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 27<sup>th</sup> August, 2024**

***PBN/\****

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*