

**IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI BENCH,**  
**RANCHI**

**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM**  
**AND**  
**SHRI PRABHASH SHANKAR, AM**

**ITA No. 136/RAN/2023**

(Assessment Year: 2017-18)

M/s Mascot Electromech  
Private Limited  
Flat No.3/2, 3rd Floor,  
Birenu Trade Centre,  
67 Penar Road, Sakchi,  
Jamshedpur-831001  
Jharkhand

Vs.

DCIT/ACIT, Circle-2,  
Jamshedpur-831001  
Jharkhand

**(Appellant)**

**(Respondent)**

**PAN No. AACCM8753B**

**Assessee by** : Shri Manoj Soni, AR  
**Revenue by** : Shri Pranob Kumar Koley, DR

**Date of hearing:** 03.09.2024

**Date of pronouncement :** 03.09.2024

**ORDER**

**PER BENCH, JM:**

01. The present appeal arises from the appellate order passed by the learned National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 19<sup>th</sup> April, 2023, in which the learned CIT (A) upheld the assessment order dated 17<sup>th</sup> December, 2019 u/s 143(3) of the Income-tax Act, 1961 (the Act).
02. The only disputed issue pertains to the addition made by the learned Assessing Officer on account of delayed payment of Employee's contribution to the Provident fund.



The assessee in the grounds of appeal on record submitted that the order is bad in law as the order was issued on the basis of due dates as mentioned in tax audit report. The 'due dates' should be taken as per the respective Act dates considering the fact described in Statement of Fact above. The order is bad in law as even if the employee's contributions are paid above the due date, the same should be allowed as deduction. There are provisions for penalty / interest under those respective Acts / rules for late payment of contributions. Further, there is no provision in the respective Act to deposit employee's and employer's contribution separately. They both are to be deposited simultaneously. In Income Tax Act, the separate provisions are given for employee and employer contributions. Hence, separate provisions in Income tax for those liabilities is against the principal guideline of the primary Acts.

03. The learned CIT (A) in his detailed order deliberated upon the issue. It has been inter alia observed that Employees' contribution to the Provident Fund must be made within 15 days of the end of every month. Employer has statutory obligation to deduct the Employees' Contribution from the salary/ wage and this deduction has to be made every month and deposited on or before 15 of the succeeding month, irrespective of whether the salary or wages have actually been paid or not. In upholding the addition made by the Id.AO, he has relied upon the landmark decision in the case of ***Checkmate Services P Ltd Vs. Commissioner Of Income Tax (Civil Appeal No.2833 of 2016 dated 12th October, 2022)***.



04. The Id.AR has made a written submission repeating the same arguments as made before the lower authorities. It is submitted that all PF and ESI dues have been duly paid and there is no intention of the assessee to delay/not pay the said liabilities. It should not suffer due to minor delay. It is also contented that due date of payment should be reckoned from the date when the payment is made as deduction of tax from the employee happens when salary is paid.
05. Per contra, Id. Sr. DR submitted that the issue in question is now squarely covered by the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd vs CIT (supra) wherein, the Hon'ble Supreme Court has categorically held that if the Employees' contributions to PF and ESI are paid beyond the time prescribed under the relevant PF/ESI Act, then the same are not allowable under section 43B, even after the payment has been made before the due date of filing of return under the Income tax Act.
06. We have heard the arguments the rival contentions and perused the material available on record carefully. The facts are that the AO made the disallowance u/s.36(1)(va) of the Act being Employees' contribution of Provident Fund and ESIC deposited beyond the due date. Admittedly, the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd (supra) has categorically held that the Employees' contribution to PF and ESI to the extent it is not paid within due date prescribed under the PF Act, is not allowable u/s.36(1)(va) of the Act. The issue in hand is therefore, no more *res integra* as Hon'ble Apex Court has set to rest any ambiguity in the matter which arose on



account of various contrary and divergent decision of various courts of law.

07. In the instant case, it is an admitted fact that the payment of Employees' contributions to the Provident Fund and ESI were made beyond the due date but before the return filed u/s.139(1) of the Act. Therefore, as per the application of the aforestated judgment by the Hon'ble Apex Court in the case of Checkmate Services Pvt Ltd(supra), it was the duty of the employer to deposit the Employees' contribution under the PF/ESI Act within the **due date prescribed in that very said enactment itself.** Respectfully following the judgment of Hon'ble Supreme Court (supra), we hold that since the assessee has not deposited the Employees' contribution to the PF/ESI Fund within the due date as prescribed under the relevant Act, it is not entitled for deduction u/s 36(1)(va) read with section 43B of the Act and the said amount has to be construed as deemed income of the assessee and has to be added to the total income. Thus, we do not find any infirmity with the findings of the Revenue authorities and appeal of the assessee is dismissed.

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

Order pronounced on 03/ 09/2024.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
(JUDICIAL MEMBER)

Sd/-  
(PRABHASH SHANKAR)  
(ACCOUNTANT MEMBER)

Ranchi, Dated: 03.09.2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. Pr.CIT, Jamshedpur
4. Sr.DR, ITAT, Ranchi
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Ranchi