

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI  
BEFORE  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
ITA No. 3217/Del/2023, (A.Y.2017-18)**

Ascent Constructions Pvt. Ltd. 39-g, Pocket-A-1, Mayur Vihar, Phase-III, New Delhi <b>PAN No: AACCA0480H</b> <b>(Appellant)</b>	Vs.	ACIT Circle191) New Delhi <b>(Respondent)</b>
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Appellant by	Sh. Sumit Lal Chandani, Adv & Sh. Tarun Chanana, Adv
Respondent by	Shri Virender Singh, Sr. DR

Date of Hearing	22/10/2024
Date of Pronouncement	25/10/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal is filed by the Assessee against the order of Ld.CIT (A)/National Faceless Appeal Centre ["NFAC" for short], dated 28/06/2023 for the Assessment Year 2017-18.

2. The grounds of Appeal are as under: -

*"1. On the facts, and circumstances of the case, the order dated 28.06.2023 passed under Section 250 of the Income Tax Act, 1961 ('the Act') by the National Faceless Appeal Centre ('NFAC') confirming the additions made by the Asst. Director of Income Tax, Centralized Processing Centre Processing Unit ('CPC') is*

*illegal, bad in law, without jurisdiction, not in accordance with the provisions of the Act, and in gross violation of principles of natural justice.*

*2. In view of the facts and circumstances of the case, the NFAC has erred in confirming the order dated 24.05.2021 passed by CPC under Section 154 of the Act and the addition made therein is illegal, bad in law, without jurisdiction, and void ab initio. The addition made is erroneous, unjustified, and illegal.*

*3. In view of the facts and in the circumstances of the case, the NFAC has erred in confirming the addition/disallowance of Rs. 17,99,567/- on account of contributions received from employees for funds referred in Section 36(1)(va) of the Act and assessing the total income of the Assessee at Rs. 4,10,33,179/-.*

*4. In view of the facts and circumstances of the case NFAC has failed to consider that the CPC has erred in making disallowance of Rs. 17,99,567/- u/s 36(1)(va) of the Act on account of contributions received from employees for funds referred in Section 36(1)(va) of the Act.*

*5. That in view of the facts and circumstances of the case, the NFAC has failed to consider the fact that the deposit of employee contribution should be reckoned from a month in which the salary has been actually disbursed rather than the month for which the salary relates.*

*6. That the CPC has failed to provide any opportunity to the Assessee and the same is in violation of the principle of natural justice and the impugned orders are liable to be set aside on this ground alone.*

*7. That the documents, explanations filed by the assessee, and the material available on record have not been properly considered and judicially interpreted and have been wrongly ignored.”*

3. There is a delay of 136 days in filing the present Appeal. The Assessee filed an application for condonation of delay contending that, the cause for the delay due to inadvertent and oversight of the accountant who was maintaining financial records of the Company. The Accountant failed to hand over the impugned order to the Director of the Assessee on time which resulted in delay in filing the present, thus sought for condoning the delay.

4. Considering the application for condonation of delay and for the reasons stated in the application, the delay of 136 days in filing the present Appeal is condoned.

5. The only issue involved in the present Appeal is regarding disallowance made u/s 36(1)(va) of Income Tax Act, 1961 ('Act' for short) on account of late deposit of Employees Contribution. The Ld. Counsel for the Assessee fairly submitted that the issue has been decided against the Assessee the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT-1 in Civil Appeal No. 2833 of 2016, vide order dated 12/10/2022 wherein it is held that payment towards employees Contribution on account of PF/ESIC made after the due date as prescribed under the relevant statute are

not allowable as deduction u/s 36(1)(va) of the Act. However, Ld. Counsel further submitted that for computing the period of delay 'month' to be taken from the month in which salary/wages are disposed by the Assessee and not the calendar month. Further submitted that similar issue has been decided by the Co-ordinate bench of the Tribunal in ITA No. 2393/Del/2023 vide order dated 14/06/2024, in the case of Subodh Kuamr Vs. ADIT, CPC, Delhi therefore, sought for remanding the matter to the file of the A.O. to ascertain the due date remittance of EPF & ESIC Contributions of Employees.

6. On the other hand, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

7. We have heard both the parties and perused the material available on record. The Co-ordinate Bench of the Tribunal in the case of Subodh Kumar Vs. ADIT, CPC, Delhi in ITA No. 3292/Del/2023 vide order dated 14/06/2024 held as under: -

*"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- Bengaluru 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 *Subodh Kumar Choudhary vs. ADIT, CPC 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."

8. By following the decision of the Coordinate Bench of the Tribunal (supra), we remand the matter to the file of the A.O. to ascertain the due date to remittance of the EPF and ESIC Contribution of the Employees. Accordingly, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 25th October, 2024

Sd/-

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

Dated: 25/10/2024

*R.N, Sr. PS*

Sd/-

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

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI